UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
v

Case No. 15-20382

Hon. Victoria A. Roberts

PAUL NICOLETTI,
Defendant.
_____

MOTION FOR DISCOVERY

Defendant Paul Nicoletti, by his attorney John Minock, requests that this Court grant his motion for the following reasons:

1. Defendant is charged in a four count indictment with one count of conspiracy to commit bank fraud and three counts of aiding and abetting bank fraud.

2. The conduct alleged occurred in 2005, during the pervasive mortgage loan industry misconduct involving mortgage loans which led in significant part to the financial crisis of 2008.

3. The facts underlying this case have been the subject of extensive civil litigation, including numerous depositions.

4. Fifth Third Bank is the alleged victim of the fraud.

5. Fifth Third bank has been investigated by government agencies, including the Securities and Exchange Commission and the Department of Justice,

and others, and has received multi-million dollar penalties at least three times for its misconduct in the processing and sale of mortgages during the time period of the conduct alleged in the indictment.

6. Defendant has requested that the government produce reports of government agency investigations of Fifth Third Bancorp's misconduct and documents consisting of or relating to United States government investigations of misconduct or improper practices in connection with mortgage lending and securitization of mortgages by Fifth Third during the run up to the financial crisis of 2008 and any evidence of systematic wrongdoing by Fifth Third during the relevant time period.

7. Defendant specifically seeks documents which include, but are not limited to, evidence of systematic mortgage improprieties generated through investigations by the United States Department of Justice, the Securities and Exchange Commission, the Residential Mortgage-Backed Securities Working Group (RMBS), coordinated by DOJ, and other United States Attorney offices .

8. It has been publicly announced by the DOJ and the SEC that investigations of Fifth Third's conduct have led to multi-million dollar penalties. These settlement agreements include consent orders and stipulations where Fifth Third admitted to substantial misconduct in the processing and sales of mortgages, and are

undoubtedly backed by documentary evidence which may be admissible at trial to show a systemic practice at Fifth Third of approving fraudulent loans. Defendant seeks any pertinent consent orders or stipulations or admissions, as well as the underlying investigative documents.

9. In addition to evidence generated by the DOJ , the SEC, and the RMBS, it is likely that the FBI, other federal investigative agencies, the DOJ, and other United States Attorney offices have generated evidence favorable to the defense regarding misconduct regarding mortgage loans by Fifth Third.

10. The information sought is relevant and favorable to the defense and should be disclosed under FRCrP 16 and *Brady v. Maryland*, 373 U.S. 83 (1963).

11. The requested evidence is relevant to the element of materiality, one of the elements of the charged offense of bank fraud. 18 U.S.C. § 1344; *Neder v. United States*, 527 U.S. 1, 25, 119 S.Ct. 1827, 1841, 144 L.Ed.2d 35 (1999). Evidence that Fifth Third systemically approved fraudulent loans tends to negate the element of materiality, because it indicates that alleged misrepresentations or omissions would not have a tendency to influence the bank's decisions whether or not to grant the loans.

12. Counsel for the government has declined the relief sought in this motion.

WHEREFORE, Defendant requests the Court order the government to disclose the requested materials from government investigations of Fifth Third.

Dated: August 5, 2016

s/John Minock
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UNITED STATES OF AMERICA,
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BRIEF IN SUPPORT OF MOTION FOR DISCOVERY

I. Introduction

Defendant is charged in a four count indictment with one count of conspiracy to commit bank fraud and three counts of aiding and abetting bank fraud. The indictment alleges that the conspirators made false material misrepresentations to induce Fifth Third Bank to issue mortgage based loans for construction of homes. The conduct alleged occurred in 2005, during the era of pervasive misconduct in the mortgage loan industry, which led to the financial crisis of 2008. In this case, employees of a local branch of Fifth Third processed dozens of mortgage loans with disregard to the accuracy of information in the loan applications and falsified information in the loan documents in order to ensure the loans were issued.

Fifth Third Bank has been investigated by several arms of the government, including the SEC and the DOJ, and received multi-million dollar fines at least three

times for its institutional misconduct in the processing and re-sale of home mortgage loans. Defendant seeks materials and reports regarding those investigations. Evidence of Fifth Third's systemic misconduct would be relevant to the defense in this case.

"Materiality" is an element of federal fraud statutes. The most common formulation is that a concealment or misrepresentation is "material" if it "has a natural tendency to influence, or was capable of influencing, the decision of the decision-making body to which it was addressed." *Kungys v. United States*, 485 U.S. 759, 770 (1988). There the Court held that the defendant's misrepresentation of his date and place of birth in applying for naturalization were not "material" because knowledge of his actual date and place of birth would not have caused the decision-maker to deny him naturalization. Misrepresentations which would not have made a difference to the decision-making body are not "material" misrepresentations.

In this case, the government must prove beyond a reasonable doubt that the decision-makers at Fifth Third would have refused to make the loans that are the subject of this case if the decision-makers had known that facts that were being misrepresented. If the decision-makers at Fifth Third did not care whether representations in loan applications were accurate so long as the representations qualified the applicants for the loans that they were seeking, Fifth Third cannot have

been defrauded, because any misrepresentations were not material to their decisions.[1]

II. THE REQUESTED MATERIAL IS DISCOVERABLE UNDER RULE 16 AND *BRADY v. MARYLAND*.

Discovery in criminal cases is governed by the Jencks Act, FRCrP 16, and *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).

Rule 16 grants criminal defendants a broad right to discovery. The government must disclose, upon defendant's request, all "documents . . . within the government's possession, custody, or control . . . [that are] material to preparing the defense[.]" FRCrP 16(a)(1)(E)(i). Information is in the possession of the government if the prosecutor "has knowledge of and access to the documents sought by the defendant." *United States v. Santiago*, 46 F.3d 885, 893 (9th Cir. 1995). A defendant must make a threshold showing of materiality, which requires a presentation of facts that would tend to show that the Government is in possession of information helpful to the defense. Id. at 894.

FRCrP 16 requires the government to disclose, upon defendant's request, all

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[1] A similar theory was presented in a criminal fraud trial in the United States District Court for the Eastern District of California, *United States v. Charikov et al*, ED CA Docket No. 12-cr-00003.

An article on that theory and the trial was published in the Journal of the American Bar Association on February 1, 2016, Carter, Terry, *Will those who led the financial system into crisis ever face charges.* The article is available at: http://www.abajournal.com/magazine/article/will_those_who_led_the_financial_system_into_crisis_ever_face_charges

"documents . . . within the government's possession, custody, or control . . . [that are] material to preparing the defense[.]" Fed. R. Crim. P. 16(a)(1)(E)(i). Information is in the possession of the government if the prosecutor "has knowledge of and access to the documents sought by the defendant." *United States v. Santiago*. 46 F.3d 885, 893 (9th Cir. 1995). To obtain discovery, a defendant must make a threshold showing of materiality, a presentation of facts that would tend to show that the government is in possession of information helpful to the defense. *Id.* at 894.

In addition, the Due Process Clause of the Fifth Amendment requires the government to disclose material information which is relevant and helpful to the defense. *Kyles v. Whitley*, 514 U.S. 419 (1995); *Brady v. Maryland*, 373 U.S. 83 (1963). Under this standard, "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case." *Kyles*, 514 U.S. at 437.

The requested materials are discoverable under Rule 16 and *Brady*.

III. FIFTH THIRD MISCONDUCT IN THE LEAD UP TO THE FINANCIAL CRISIS WAS SYSTEMIC.

Problematic lending practices were ubiquitous at Fifth Third Bank affiliates across the country during the time at which the subject loans were made. Evidence demonstrates that Fifth Third Bank affiliates routinely committed misconduct regarding mortgage loans, and the practices at the Eastern Michigan affiliate were not

unique and isolated.

These practices were systemic throughout the mortgage loan industry and included other major banks in addition to Fifth Third. The Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States issued in January, 2011, reached a number of conclusions regarding misconduct in the financial industry which led to an international economic crisis, from which the world is still recovering. The full report is available at https://fcic.law.stanford.edu/report. Among the Commission conclusions relevant to bank lending practices are the following:

- the crisis was avoidable, but risky loan practices were pervasive;

- widespread failures in financial regulation and supervision proved devastating to the stability of the nation's financial markets;

- dramatic failures of corporate governance and risk management at many systemically important financial institutions were a key cause of this crisis;

- excessive borrowing, risky investments, and lack of transparency put the financial system on a collision course with crisis;

- there was a systemic breakdown in accountability and ethics, and lenders made loans which they knew did not meet their own underwriting standards, knew borrowers could not afford, and knew would lead to massive losses to investors in

mortgage securities;

- collapsing mortgage-lending standards and the mortgage securitization pipeline spread the crisis, because lenders willfully disregarded a borrower's ability to pay.

Simply put, from top to bottom, those involved in the mortgage loan industry, including Fifth Third as an institution, did not care about the accuracy of information in loan applications. There was internal institutional pressure for employees to process as many loans as possible in order to generate profits, and little or no underwriting to check on the accuracy of the information in the loan documents, and Fifth Third was no different than their counterparts. Fifth Third Bancorp put commission and employee incentive programs in place nationally, which rewarded employees based upon the number of loans processed and issued, and not based upon how those loans performed, because most were re-sold on the secondary mortgage loan market.

Three multi-million dollar penalties assessed by the government against Fifth Third demonstrate a widespread pattern of misconduct.

A. Fifth Third Settles With SEC for $6.5 Million.

In 2013, the SEC instituted proceedings against Fifth Third, and against its CFO Daniel Poston, for the Bank's failure to record substantial losses involving its

commercial real estate loan portfolio.

In the third quarter of 2008, Fifth Third decided to sell large pools of non-performing commercial loans. When Fifth Third decided to sell the loans, generally accepted accounting principles (GAAP) required the company to reclassify them from "held for investment" to "held for sale," and to carry them at fair value. Because the fair values of these loans were significantly below Fifth Third's carrying values, classifying them as held for sale would have resulted in a $169 million impairment, and increased Fifth Third's pretax loss in the third quarter of 2008 by 132 percent. Fifth Third's Chief Financial Officer Daniel Poston was familiar with the company's loan sale efforts and understood the relevant accounting rules. Nevertheless, he failed to direct that Fifth Third classify the loans as required, and made statements in a Fifth Third management representation letter to Fifth Third's auditors that, in light of the company's loan sale activities, were not true.

Both Poston and Fifth Third were sanctioned by the SEC. See SIGTARP Press Release, Exhibit 1, and SEC Order 33-9490, December 4, 2013, Exhibit 2.

B. Fifth Third Settles New York Qui Tam Action for $85 Million.

In 2011, civil plaintiffs filed a *qui tam* action against Fifth Third in the United States District Court for the Southern District of New York on behalf of the United States and the State of New York. *United States ex rei. George Mann and John*

Ferguson, et al, v. Fifth Third Bancorp and its Subsidiaries, SD NY Docket No. 11 CIV 4499. The suit alleged a variety of misconduct at Fifth Third regarding residential loan mortgages originated at the bank.

On September 30, 2015, the government entered into a Settlement Agreement with Fifth Third Bank in the lawsuit regarding the use of fraudulently inflated appraisals as part of its residential mortgage origination. The 1,439 loans in question were made between 2003 and 2013, and had been certified by Fifth Third to HUD as eligible for FHA insurance when in fact they were materially defective and not eligible. As part of the settlement, Fifth Third agreed to pay the U.S. government almost $85 million. United States Attorney Press Release, October 6, 2015, Exhibit 3; *United States ex rei. George Mann, et al, v. Fifth Third Bancorp* Settlement Agreement, Exhibit 4.

The practice of appraisal fraud was occurring at Fifth Third affiliates nationally, as well as at the Michigan affiliate in this case, as was revealed in the depositions of former Fifth Third bank employees during the Oakland County civil lawsuit involving these same facts.

The Cincinnati Enquirer on October 6, 2015, summarized the story as follows, Exhibit 6:

> Fifth Third's quality control personnel were making false representations about the loans before and during the time the bank accepted $3.4 billion

> in federal money from the Troubled Asset Relief Program, the bank acknowledged in the settlement. The bank participated in the program from 2008 to 2011. Regulators demand full and timely disclosure of such issues because taxpayers ultimately foot the bill when the FHA must cover bad loans, federal authorities said… Shoddy lending practices to risky mortgage borrowers are widely blamed for perpetuating the real estate bubble that touched off the 2008 financial crisis and ultimately the Great Recession. Financial markets plowed money into the U.S. real estate market, and banks and mortgage lenders were flush selling off those home loans to eager bond investors. But panic ensued when homeowners began to default on their mortgages. Beyond government-guaranteed loans, Fifth Third and many peers were saddled with billions of dollars in bad mortgages they were ultimately forced to write off.

C. Fifth Third Agrees to Reimburse Freddie Mac for $25 Million in Bad Loans.

In addition, although little public information appears on the internet, the Wall Street Journal reported on November 25, 2013, that Fifth Third Bancorp reached a settlement agreement with Freddie Mac on agreed to pay $25 million to Freddie Mac as part of a settlement over defective mortgages sold to the government-controlled home-loan financier. Exhibit 5, WSJ article. Freddie Mac and its larger sibling, Fannie Mae, can force banks to buy back mortgages which do not conform to agreed upon guidelines, and both companies have demanded that lenders repurchase billions in soured loans over the past four years. The settlement agreement involved mortgage loans originated and sold to Freddie Mac by Fifth Third before Jan. 1, 2009.

CONCLUSION

Following the financial crisis precipitated in large part by the mortgage lending

practices of banks and the mortgage loan industry, multiple government agencies investigated the financial institutions responsible. Fifth Third was among those banking institutions investigated. While some information, such as settlement agreements, are publicly available, the underlying investigative materials obtained are not.

Defendant has made a sufficient showing that the information likely exists and would be relevant on the element of materiality in the charged offenses. For all the above reasons, the Court should order the government to obtain and disclose the requested information regarding the government's investigation of misconduct in Fifth Third mortgage loan practices during the period of time at issue in this case.

Dated: August 5, 2016

s/John Minock
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CERTIFICATE OF SERVICE

I hereby certify that on August 5, 2016, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to the attorneys of record.

s/John Minock

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EXHIBIT LIST

1. SIGTARP press release December 6, 2013

2. SEC Order 33-9490, December 4, 2013

3. United States Attorney SD NY Press Release, October 6, 2015

4. *United States ex rei. George Mann, et al, v. Fifth Third Bancorp* Settlement Agreement, Exhibit 4

5. Wall Street Journal article re: Fifth Third settlement with Freddie Mac, November 25, 2013

SIGTARP | Office of the Special Inspector General for the Troubled Asset Relief Program

Advancing Economic Stability Through Transparency, Coordinated Oversight and Robust Enforcement

FOR IMMEDIATE RELEASE
Friday, December 6, 2013

Media Inquiries: 202-927-8940
Twitter: @SIGTARP
Web: www.SIGTARP.gov

TARP RECIPIENT FIFTH THIRD BANK AND FORMER BANK CFO CHARGED FOR IMPROPER ACCOUNTING OF LOAN LOSSES DURING FINANCIAL CRISIS

WASHINGTON, DC - The Office of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) today announced that the holding company of Cincinnati-based Fifth Third Bank and its former chief financial officer, Daniel Poston, were charged on Wednesday by the Securities and Exchange Commission (SEC) with improper accounting of commercial real estate loans in the midst of the financial crisis.

Fifth Third agreed to pay $6.5 million to settle the SEC's charges, and Daniel Poston agreed to pay a $100,000 penalty and be suspended from practicing as an accountant on behalf of any publicly traded company or other entity regulated by the SEC.

According to the SEC's order instituting settled administrative proceedings, Fifth Third experienced a substantial increase in "non-performing assets" as the real estate market declined in 2007 and 2008 and borrowers failed to repay their loans as originally required. Fifth Third decided in the third quarter of 2008 to sell large pools of these troubled loans. Once Fifth Third formed the intent to sell the loans, U.S. accounting rules required the company to classify them as "held for sale" and value them at fair value. Proper accounting would have increased Fifth Third's pretax loss for the quarter by 132 percent. Instead, Fifth Third continued to classify the loans as "held for investment," which incorrectly suggested that the company had not made the decision to sell the loans.

"When it mattered most, Fifth Third failed to write down the value of loans it held on its books, and as a result, the bank didn't show its true losses on those loans in the records it used to apply for TARP funds," said Christy Romero, Special Inspector General for TARP (SIGTARP). "Treasury and federal taxpayers, who funded the TARP bailout and who became investors in Fifth Third and other banks, deserved to know the truth about Fifth Third's financial condition."

Fifth Third Bancorp, the parent company of Fifth Third Bank, received $3.4 billion in TARP funds in December 2008. The TARP funds were repaid by the bank in 2011.

According to the SEC's order, Poston was familiar with the company's loan sale efforts, which included entering into agreements with brokers during the third quarter of 2008 to market and sell loans. Despite understanding the relevant accounting rules, Poston failed to direct Fifth Third to classify and value the loans as required. Poston also made inaccurate statements to Fifth Third's auditors about the company's loan classifications and certified the company's inaccurate results for the third quarter of 2008.

Fifth Third and Poston consented to the entry of the order finding that they violated or caused violations of Sections 17(a)(2) and (3) of the Securities Act of 1933 as well as the reporting, books and records, and internal controls provisions of the federal securities laws. Without admitting or denying the findings, they agreed to cease and desist from committing or causing any violations and any future violations of these provisions. Poston is suspended from appearing or practicing before the SEC as an accountant pursuant to Rule 102(e) of the Commission's Rules of Practice with the right to apply for reinstatement after one year.

The SEC conducted the investigation with assistance from SIGTARP.

About SIGTARP

The Office of the Special Inspector General for the Troubled Asset Relief Program investigates fraud, waste, and abuse in connection with TARP.

To report suspected illicit activity involving TARP, dial the **SIGTARP Hotline**: 1-877-SIG-2009 (1-877-744-2009).

To receive alerts about quarterly reports, new audits, and media releases issued by SIGTARP, sign up at www.SIGTARP.gov/pages/press.aspx. Follow SIGTARP on Twitter @SIGTARP.

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9490 / December 4, 2013

SECURITIES EXCHANGE ACT OF 1934
Release No. 70983 / December 4, 2013

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3514 / December 4, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15635

In the Matter of

FIFTH THIRD BANCORP and DANIEL POSTON

Respondents.

ORDER INSTITUTING PUBLIC ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTIONS 4C AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AND RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND CEASE-AND-DESIST ORDERS AND PENALTIES

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Fifth Third Bancorp ("Fifth Third") and Daniel Poston ("Poston") (collectively, "Respondents") , and that public administrative proceedings be, and hereby are, instituted against Poston pursuant to Section 4C of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 102(e)(1)(iii) of the Commission's Rules of Practice.

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the "Offers") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Public

Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions and Cease-and-Desist Orders and Penalties ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds[1] that:

SUMMARY

This proceeding results from Fifth Third's failure to record substantial losses during the financial crisis by not properly accounting for a portion of its commercial real estate loan portfolio. In the third quarter of 2008, Fifth Third decided to sell large pools of non-performing commercial loans. When Fifth Third decided to sell the loans, Generally Accepted Accounting Principles ("GAAP") required the company to reclassify them from "held for investment" to "held for sale," and to carry them at fair value.[2] Because the fair values of these loans were significantly below Fifth Third's carrying values, classifying them as held for sale would have resulted in a $169 million impairment, and increased Fifth Third's pretax loss in the third quarter of 2008 by 132 percent. Fifth Third's Chief Financial Officer Daniel Poston was familiar with the company's loan sale efforts and understood the relevant accounting rules. Nevertheless, he failed to direct that Fifth Third classify the loans as required, and made statements in a Fifth Third management representation letter to Fifth Third's auditors that, in light of the company's loan sale activities, were not true. Fifth Third's and Poston's accounting violations operated to deceive investors during a time of significant upheaval and financial distress for the company.

As the real estate market declined in 2007 and 2008, Fifth Third's non-performing assets ("NPAs") increased substantially. In the third quarter of 2008, it became clear that Fifth Third would no longer be able to rely on its collections and related "work-out" efforts to significantly reduce its NPAs. The only alternative the company meaningfully considered was selling some of its non-performing loans. In July 2008, Poston and the other members of Fifth Third's Corporate Credit Committee authorized the head of Fifth Third's commercial banking division ("the EVP") to determine the likely sales prices for certain pools of non-performing loans. At the time, Fifth Third was carrying these loans at about 75 percent of unpaid balances (as a result of allowances for incurred credit losses and charge-offs taken against the unpaid principal balances). Loan brokers

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[1] The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

[2] GAAP prescribes that loans held for sale must be reported at the lower of cost or fair value. Because the fair values of all the loans in this matter were below cost, references herein to such reclassification only refer to fair value. See SOP 01-6, *Accounting by Certain Entities (Including Entities With Trade Receivables) That Lend to or Finance the Activities of Others.*

told Fifth Third that the loans would likely sell, on average, for 30 to 41 percent of unpaid balances.

With Fifth Third's NPAs continuing to increase, the company's senior management decided to pursue a large sale of non-performing commercial loans. In September 2008, Fifth Third executed engagement agreements with two loan brokers to market and sell loans with combined balances of $1.5 billion.[3] Poston was aware that the company's commercial banking division had engaged the loan brokers.

Despite all of the actions that Fifth Third had taken with respect to these loans – including signing engagement agreements with brokers to sell the loans – the company did not classify the loans as held for sale and record them accordingly in its Form 10-Q for the third quarter of 2008. Instead, Fifth Third continued to classify the loans as "held for investment," which incorrectly suggested that the company had not made the decision to sell the loans. Poston certified the accuracy and completeness of Fifth Third's Form 10-Q for the third quarter of 2008 despite his knowledge of the company's loan sales activities and the relevant accounting rules.

In addition, Poston represented to the company's auditors in Fifth Third's November 7, 2008 management representation letter for the third quarter of 2008 that the company had no plans or intentions that may affect the classification of loans, and that the loans Fifth Third had classified as held for investment were those that the company had the intent and ability to hold until maturity or for the foreseeable future. In light of Fifth Third's intent to sell the loans, these representations were not true. Fifth Third began receiving and accepting bids for loans that the brokers marketed about two weeks after Fifth Third's management representation letter was submitted to the company's auditor.

In December 2008, Fifth Third senior management consulted with the company's board of directors about management's decision to sell the non-performing commercial real estate loans discussed above, as well as additional loans that Fifth Third decided in December 2008 to sell. Fifth Third did not disclose the impairments resulting from the reclassification of all the loans until January 22, 2009. The reclassifications resulted in a cumulative $800 million loss. Fifth Third sold most of the loans at issue in December 2008 and in 2009.

RESPONDENTS

1. Fifth Third Bancorp, a diversified financial services company, is an Ohio corporation headquartered in Cincinnati, Ohio. With $121 billion in assets, Fifth Third is the twenty-second largest bank holding company in the United States. Fifth Third's common stock is registered with the Commission pursuant to Exchange Act Section 12(b) and trades on NASDAQ.

2. Daniel Poston, 55, is a resident of Cincinnati, Ohio, and was Fifth Third's CFO from 2009 to October 2013. Poston was previously Fifth Third's interim CFO (May 2008 to

[3] After receiving bids, Fifth Third had the option not to sell any of the loans at issue. Fifth Third began receiving bids on those loans in November 2008.

November 2008), Controller (August 2007 to May 2008 and November 2008 to September 2009), and Director of Audit (October 2001 to August 2007). Before joining Fifth Third, Poston was a partner with a large public accounting firm. Poston was a licensed CPA in Ohio until he left public accounting in September 2001.

FACTS

Fifth Third Considers Loan Sales as NPAs Rise and then Takes Steps to Prepare for a Sale

3. From the third quarter of 2007 through the second quarter of 2008, Fifth Third considered selling pools of non-performing commercial real estate loans.[4] Though it had generally held its commercial loans until maturity, Fifth Third considered selling certain of these loans to deal with a substantial increase in its NPAs.[5] By selling these loans, Fifth Third would save the carrying costs of the loans, such as maintaining the properties and paying property taxes; mitigate the need for additional impairments if workout strategies failed or real estate values continued to decline; avoid the expenses and delays of foreclosure; and allow Fifth Third to report a stronger balance sheet. Fifth Third chose not to sell the loans during this period, however, because it deemed the prices it expected to receive from such sales too low.

4. In the third quarter of 2008, it became clear that Fifth Third's efforts to work out the non-performing loans with the borrowers would not be sufficient to significantly reduce the company's NPAs, and that the company needed to pursue a large loan sale. In July 2008, Poston and the other members of Fifth Third's Corporate Credit Committee authorized the EVP to determine the likely sales prices for four pools of non-performing loans and review the results with the Committee. That day, the EVP instructed his staff to prepare for loan sales. The EVP's direct report and the head of the commercial bank's Special Assets Group ("SAG VP"), then told commercial bank employees, "[o]ur intention is to do a large sale using [loan] brokers …." By the end of July 2008, Fifth Third had decided to use two loan brokers ("Broker A" and "Broker B") to handle a potential sale of loans with combined balances of $700 million.

Fifth Third's Interim Controller Informs Poston of Potential
Accounting Consequences from Fifth Third's Loan Sale Activities

5. In July and August 2008, Broker A and Broker B both discussed with Fifth Third the potential accounting consequences of the company obtaining "indicative pricing" – i.e. the brokers' expert opinions of what the sales prices were likely to be for the loans. Broker A told the

[4] All of the loans discussed in this matter involved commercial properties in Michigan and Florida. During the relevant period, the value of the collateral securing these loans, which were primarily homebuilder-related properties, was declining at a significant rate.

[5] Fifth Third's NPAs were loans on which the ultimate collectability of the full amount of principal and interest was uncertain or that had been renegotiated to provide for a reduction or deferral of interest or principal because of a deterioration in the financial position of the borrower. At year-end 2006, Fifth Third had $271 million in commercial NPAs. By year-end 2007, commercial NPAs had more than doubled to $672 million.

SAG VP that one of Fifth Third's competitors had told Broker A that an audit firm had required the competitor to re-classify loans from held for investment to held for sale when it had obtained indicative pricing from a loan broker, and, consistent with the GAAP requirement to report the loans at fair value, to mark the loans down to the indicative prices it had received from the loan broker, regardless of whether the company sold the loans. After learning of this development, an employee in Fifth Third's risk group sought advice from Fifth Third's interim Controller, noting "[a]s we continue to work on potential commercial loan sales … we want to be sure that if we go out to get indicative prices from brokers that we do not need to mark those loans to market based on those bids."

6. Broker B asked the SAG VP whether Fifth Third "even wanted [indicative] pricing" on the loans it was considering selling. Broker B told the SAG VP that their "early indications are very low" and that Fifth Third's "peers have not wanted this info, because of the accounting rulings." Broker B also asked the SAG VP whether Fifth Third "had the budget set forth for such a large potential [charge-off]."[6] The risk group employee forwarded an email from the SAG VP summarizing this discussion to the interim Controller, and again asked for "confirmation from Accounting before we have the vendor send the pricing information that we will not be forced to take a mark on the loans based on indicative pricing quotes."

7. In the same email chain, the risk group employee expressed his understanding to the interim Controller that Fifth Third should not have to classify these loans as held for sale because the company had not decided to sell them, and would be using the indicative pricing to help it decide whether to proceed with a sale.

8. On August 4, the interim Controller recommended to his colleagues that they "**hold off** on receiving any specific pricing information since it may imply an intent to sell, [and] thereby require us to classify them as [held for sale] and take a mark to adjust the loans to those prices. . . " (emphasis in original). The interim Controller then forwarded the emails to Poston, who was serving as Fifth Third's Chief Financial Officer on an interim basis, and explained that he had "provided verbal/tentative guidance to [the risk group employee] that the receipt of bids on specific loans or pools of loans may be viewed as being inconsistent with the positive intent to hold a loan to maturity and therefore might call into serious question the classification of such loans to the extent they remained [classified as held for investment]."[7]

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[6] The reference to potential charge-off refers to the impairment that Fifth Third would need to recognize to record the loans at fair value upon the reclassification of the loans from held for investment to held for sale.

[7] The interim Controller also indicated that he and his team would research the issue and report back. The interim Controller and his team consulted, among other things, Fifth Third's draft policy regarding loan classification, which mirrors the Interagency Guidance on Certain Loans Held for Sale (2001) and a 2007 speech by an SEC accounting fellow on loan classification, which conveys the SEC staff's belief that the classification of loans as held for investment or held for sale is dependent on management intent, and that management should make a positive assertion regarding its ability and intent to hold or sell loans and classify them accordingly. The interim Controller, who believed that the company continued to have the intent to hold the loans until maturity or for the foreseeable future, concluded that a receipt of indicative bids was not, by itself, a bright light indicator that an issuer had decided to sell loans.

9. Fifth Third subsequently obtained indicative pricing only *orally* from the two loan brokers. On August 5, Broker A prepared two pricing analyses for Fifth Third: one containing Broker A's most current pricing analysis and a second "that we can send to Fifth Third[]. Pricing information has been removed. . . ." The following day, one of Broker A's principals informed his colleagues that he had given Fifth Third pricing orally, by broad categories. On August 5, Broker B sent the SAG VP a list of loans that Broker B recommended for sale that included the unpaid customer balances for each loan, but no pricing information. In an August 7 email, the SAG VP stated he received "verbal numbers" from Broker B.

10. Poston, who had previously served as Fifth Third's Controller and would return to that role in November 2008, understood the relevant accounting rules.

Fifth Third Retains Loan Brokers to Sell Loans

11. During the August 15 meeting of the Fifth Third Enterprise Committee (which was comprised of Fifth Third's Chief Executive Officer and his direct reports, including Poston and the EVP, but not the interim Controller), the EVP's team presented an analysis of the potential loan sales estimating that, based on the brokers' indicative pricing, selling the $700 million of loans they had identified would result in Fifth Third recording a $272 million impairment. The Enterprise Committee decided to delay a decision on whether to proceed with the contemplated loan sales until the following week's meeting.

12. As it saw its commercial NPAs continuing to increase, Fifth Third began considering an even larger loan sale. Bank executives considered two options: proceeding with the $700 million loan sale they had been contemplating or pursuing a $2 billion loan sale, which would include the $700 million in loans they had already been discussing with the brokers.

13. During the August 22 Enterprise Committee meeting that Poston and other senior executives attended, Fifth Third decided to pursue a larger sale than the company had been discussing with the loan brokers. After identifying additional loans to include in a larger sale, Fifth Third entered into engagement agreements with Broker A and Broker B in September 2008, which evidenced that the company had formed the intent to sell the loans. The agreements provided that the brokers would help Fifth Third market and sell loans totaling about $1.5 billion. Poston was aware that the company's commercial banking division had engaged the loan brokers.[8]

Fifth Third Fails to Reclassify Loans as Required

14. Though Fifth Third had entered into engagement agreements with the brokers to facilitate a sale, which evidenced that the company had formed the intent to sell the loans, the company did not reclassify the loans from held for investment to held for sale prior to the filing of its Form 10-Q for the quarter ended September 30, 2008.

[8] In October 2008, Fifth Third received additional pricing information from the brokers and authorized them to begin marketing the loans and soliciting bids from potential buyers.

15. During its earnings call in October 2008 and in the Form 10-Q that it filed in November 2008 – which occurred during a time of significant economic upheaval and financial distress for Fifth Third – Fifth Third reported a pretax loss of $128 million for the third quarter of 2008. Had Fifth Third reclassified the loans that were the subject of the engagement agreements as required by GAAP, it would have reported a pretax loss of $297 million.[9] As Fifth Third's Chief Financial Officer, Poston signed the company's Form 10-Q for the quarter ended September 30, 2008 and certified the accuracy and completeness of its contents.

Poston Makes Representations to Fifth Third's Auditors
that, in Light of the Company's Loan Sale Activities, were Not True

16. Though he was familiar with Fifth Third's loan sale activities and understood that another audit firm may have required a competitor to reclassify loans based on having received indicative pricing, neither Poston, nor anyone else at Fifth Third, sought advice from the company's outside auditor, Deloitte & Touche, regarding the appropriate classification of the loans at issue.

17. On November 7, Poston signed Fifth Third's management representation letter to Deloitte, which states, "[t]he Bancorp has no plans or intentions that may affect the carrying value or classification of assets and liabilities" and "[t]he Bancorp has properly classified loans on the condensed consolidated balance sheets as held for sale or held for investment, based on the Bancorp's intent with respect to those loans." In light of Fifth Third's intent to sell the loans, these representations were not true.

18. Fifth Third began receiving and accepting bids for loans that the brokers marketed about two weeks after Fifth Third's management representation letter was submitted to Deloitte. Fifth Third's senior management consulted with the company's board of directors in December 2008 about its decision to sell the loans discussed above along with additional loans that Fifth Third decided in December 2008 to sell. Fifth Third did not disclose the impairment resulting from the reclassification of all the loans until January 22, 2009, when it released its earnings for the fourth quarter of 2008. Fifth Third sold most of the loans at issue in December 2008 and in 2009.

VIOLATIONS

19. Securities Act Section 17(a)(2) prohibits any person from obtaining money or property in the offer or sale of securities by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

[9] The impairment from the reclassification was $169 million. This was less than the $272 million expected impairment as of August 15 because Fifth Third increased its partial charge-offs and reserves for the loans at issue between then and September 30.

20. Securities Act Section 17(a)(3) prohibits any person from engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser in the offer or sale of securities.

21. Exchange Act Section 13(a) and Rule 13a-13 thereunder require that every issuer of a security registered pursuant to Exchange Act Section 12 file with the Commission, among other things, quarterly reports as the Commission may require, and, pursuant to Rule 13a-14, mandate, among other things, that an issuer's principal financial officer certify each periodic report.

22. Exchange Act Section 13(b)(2)(A) requires reporting companies to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets.

23. Exchange Act Section 13(b)(2)(B) requires all reporting companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP.

24. Exchange Act Rule 13b2-1 prohibits any person from directly or indirectly falsifying or causing to be falsified any book, record or account subject to Exchange Act Section 13(b)(2)(A).

25. Exchange Act Rule 13b2-2 prohibits, among other things, officers of issuers from directly or indirectly making or causing to be made a materially false or misleading statement, or omitting to state any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading to an accountant in connection with any quarterly review or the preparation or filing of any document or report required to be filed with the Commission.

26. As a result of the conduct described above, Fifth Third violated Securities Act Sections 17(a)(2) and 17(a)(3), and Exchange Act Sections 13(a) and Rule 13a-13 because its financial statements failed to record its commercial real estate loans appropriately under GAAP.

27. As a result of the conduct described above, Fifth Third violated Exchange Act Sections 13(b)(2)(A) and 13(b)(2)(B) because it failed to make and keep appropriate books and records and devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that it valued its commercial real estate loans in accordance with GAAP.

28. As a result of the conduct described above, Poston willfully violated Securities Act Section 17(a)(3) and Exchange Act Rules 13a-14, 13b2-1, and 13b2-2 and caused and willfully aided and abetted Fifth Third's violations of Securities Act Sections 17(a)(2) and 17(a)(3) and Exchange Act Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) and Rule 13a-13 because he failed to ensure that Fifth Third appropriately recorded its commercial real estate loans; certified that Fifth Third's financial statements were prepared in accordance with GAAP; and made representations in

a Fifth Third management representation letter to Fifth Third's auditors regarding the company's classification of commercial loans that, in light of Fifth Third's intent to sell loans, were not true.[10]

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Fifth Third Bancorp's and Respondent Daniel Poston's Offers.

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Fifth Third Bancorp shall cease and desist from committing or causing any violations and any future violations of Securities Act Sections 17(a)(2) and 17(a)(3) and Exchange Act Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) and Rule 13a-13 thereunder.

B. Daniel Poston shall cease and desist from committing or causing any violations and any future violations of Securities Act Sections 17(a)(2) and 17(a)(3) and Exchange Act Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) and Rules 13a-13, 13a-14, 13b2-1, and 13b2-2 thereunder.

C. Daniel Poston is denied the privilege of appearing or practicing before the Commission as an accountant.

D. After one year from the date of this order, Respondent Poston may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Respondent Poston's work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

(a) Respondent Poston, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

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[10] This use of the word "willful" does not reflect a finding that Poston acted with the intention to violate the law or knowledge that he was doing so. As used in the governing provisions of law, "willfully" means only that the actor "intentionally committed the act which constitutes the violation." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965); *see also Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000). "There is no requirement that the actor also be aware that he is violating one of the Rules or Acts . . . ." *Tager,* 344 F.2d at 8.

(b) Respondent Poston, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the respondent's or the firm's quality control system that would indicate that the respondent will not receive appropriate supervision;

(c) Respondent Poston has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

(d) Respondent Poston acknowledges his responsibility, as long as Respondent Poston appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

E. The Commission will consider an application by Respondent Poston to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Respondent Poston's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

F. Respondent Fifth Third shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of $6,500,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or
(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Fifth Third as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Stephen L. Cohen, Esq., Associate

Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

G. Respondent Daniel Poston shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of $100,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or
(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Poston as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Stephen L. Cohen, Esq., Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

H. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, the Commission may order that any civil money penalty paid by Fifth Third and Poston be used to create a Fair Fund for the benefit of injured investors. If the Commission does not create a Fair Fund, the Commission will order the transfer of any civil money penalty paid by Respondents to the United States Treasury in accordance with Section 21F(g) of the Securities Exchange Act of 1934 for the Investor Protection Fund. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payments of civil penalties in this action ("Penalty Offsets"). If the court in any Related Investor Action grants such Penalty Offsets, Respondents agree that they shall, within 30 days after entry of a final order granting Penalty Offsets, notify the Commission's counsel in this action and pay the amounts of Penalty Offsets to the United States Treasury or as the Commission directs. Such payments shall not be deemed additional civil penalties and shall not be deemed to change the amounts of the civil penalties imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action"

means a private damages action brought against either Fifth Third or Poston by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Elizabeth M. Murphy
Secretary

Department of Justice

U.S. Attorney's Office

Southern District of New York

FOR IMMEDIATE RELEASE Tuesday, October 6, 2015

Manhattan U.S. Attorney Announces $85 Million Settlement With Fifth Third Bancorp Over Failures To Self-Report Defective Mortgage Loans To FHA

Bank Made Voluntary Disclosure of Self-Reporting Failures, Admitted Violations,

Preet Bharara, the United States Attorney for the Southern District of New York, Helen R. Kanovsky, General Counsel of the U.S. Department of Housing and Urban Development ("HUD"), and Christy Goldsmith Romero, Special Inspector General for the Troubled Asset Relief Program ("SIGTARP"), announced today an $85 million settlement with FIFTH THIRD BANCORP and its subsidiaries ("FTB" or the "Bank") resolving civil fraud claims arising from FTB's origination of residential mortgage loans insured by the Federal Housing Administration ("FHA"). FTB made a voluntary disclosure of approximately 1,400 mortgage loans that the Bank had certified as eligible for FHA insurance, later determined were materially defective and thus ineligible for FHA insurance, but never self-reported to HUD, resulting in millions of dollars in HUD losses. As part of the settlement approved yesterday by United States District Judge Deborah A. Batts, FTB will pay approximately $85 million to cover federal losses on approximately 500 of the loans that defaulted and for which HUD paid insurance claims, and indemnify HUD for all losses HUD may incur on approximately 900 defective loans that have not yet defaulted. FTB admitted and accepted responsibility for failing to self-report mortgage loans it knew to be defective, contrary to HUD requirements. FTB has also reformed its business practices and terminated the employment of responsible employees.

Manhattan U.S. Attorney Preet Bharara said: "Federal insurers rely on banks when they promise that the mortgage loans they originate are eligible for that insurance. When banks discover that some of the loans are lemons and that their promises of quality were false, as Fifth Third Bank did, they must come forward and report it promptly, so that taxpayers don't get stuck with the bill. With this settlement, Fifth Third Bancorp has admitted to originating about 1,400 materially defective loans that were not eligible to

be FHA insured and has taken positive steps to reform its quality control program, including terminating the employees responsible."

HUD General Counsel Helen R. Kanovsky said: "Lenders have a responsibility to notify us when they discover material defects in the FHA-insured loans they originate. We will continue to protect FHA's insurance fund and to ensure borrowers have access to affordable and sustainable mortgage financing."

SIGTARP Special Inspector General Christy Goldsmith Romero said: "Before and during the time Fifth Third was bailed out in TARP, its Quality Control employees made false representations to HUD that residential mortgages the bank originated were of the quality required to be insured by HUD. The bank's false representations cost HUD millions of dollars to pay insurance claims on 519 of the materially defective loans that later defaulted. Fifth Third's actions to fire those employees, voluntarily disclose its violations of the False Claims Act and FIRREA to law enforcement, and make corporate changes should stand as an example for others who violated the law. SIGTARP will root out violations of the law related to TARP with our law enforcement partners such as U.S. Attorney Preet Bharara. It is always better to disclose those violations rather than wait for SIGTARP to find them."

As set forth in the settlement agreement:

HUD offers various mortgage insurance programs through which it insures approved lenders against losses on mortgage loans made to buyers of single-family housing, including FHA's Direct Endorsement Lender program, which authorizes private-sector mortgage lenders ("Direct Endorsement Lenders") to underwrite mortgage loans, decide whether the borrower represents an acceptable credit risk for HUD, and certify loans for FHA mortgage insurance without prior HUD review or approval.

Because HUD relies on Direct Endorsement Lenders to determine which loans should be endorsed for FHA insurance, it requires that Direct Endorsement Lenders conduct adequate due diligence on loans before certifying them for FHA insurance. Direct Endorsement Lenders are also required to maintain an adequate quality control program, which includes self-reporting to HUD in writing within 60 days of initial discovery any loans identified during quality reviews that are affected by serious deficiencies, patterns of non-compliance, or fraud.

Direct Endorsement Lenders make a number of certifications to HUD, including annual certifications and individual loan certifications. In the annual certification, the Direct Endorsement Lender represents that it conforms to all HUD-FHA regulations necessary to maintain its HUD-FHA approval, and among the basic requirements necessary to maintain such approval is the implementation of a compliant quality control program, including timely self-reporting to HUD any loans affected by serious deficiencies, patterns of non-compliance, or fraud. In the individual loan certification, the Direct Endorsement Lender represents that each mortgage is eligible for FHA mortgage insurance.

FTB is an Ohio-chartered bank headquartered in Cincinnati, Ohio. FTB has been a Direct Endorsement Lender since at least 2003 and has submitted both annual and individual loan certifications to HUD.

In 2012, FTB made a voluntary disclosure to the Government of certain residential mortgage loans that FTB had originated and certified to HUD as eligible for FHA insurance, but had later found, through post-closing quality reviews, were in fact materially defective and not eligible for FHA insurance. In 2014, FTB made a supplemental voluntary disclosure to the Government identifying additional materially defective mortgage loans that FTB had failed to self-report to HUD. FTB voluntarily disclosed to the Government a total of 1,439 materially defective loans originated from 2003 through 2013. HUD paid insurance claims on 519 of those loans after they defaulted, and no insurance claims have been submitted to HUD for 920 of the loans.

As part of the settlement, the Bank will pay $84,911,018 to resolve liability under the False Claims Act and the Financial Institutions Reform, Recovery and Enforcement Act arising from the 519 loans for which HUD paid insurance claims. FTB will indemnify HUD for all losses HUD may incur on the 914 loans that have not defaulted. The Bank will also make an administrative payment to HUD of $2,044,000 as part of a separate indemnification agreement with HUD.

FTB admitted, acknowledged, and accepted responsibility for its self-reporting violations, including that:

- FTB was required to self-report to HUD any serious deficiencies, patterns of non-compliance, or fraud within 60 days of the initial discovery;
- FTB made annual certifications to HUD that it conformed to all HUD-FHA regulations necessary to maintain its HUD-FHA approval, which included the implementation of a mandatory quality control program by which FTB reported to HUD all serious deficiencies, patterns of non-compliance, or fraud;
- From 2003 through 2013, FTB's quality control program identified through post-closing reviews 1,436 residential mortgage loans that FTB had originated and certified to HUD as eligible for FHA insurance that were materially defective and thus ineligible for FHA insurance; and
- FTB failed timely to self-report these materially defective loans to HUD pursuant to HUD requirements.

FTB has taken steps to reform its quality control program, including terminating the employment of personnel responsible for FTB's failure to self-report materially defective loans to HUD.

This matter arose, in part, from the filing of a whistleblower complaint under the False Claims Act.FTB made its voluntary disclosure to the Government without knowledge of the whistleblower complaint filed under seal or the Government's investigation of that complaint.The Government intervened in the whistleblower lawsuit and entered into this settlement resolving the case.

The case has been handled by the Office's Civil Frauds Unit. Assistant U.S. Attorney Pierre G. Armand is in charge of the case.

15-257 USAO - New York, Southern

Download Fifth Third Stipulation Settlement and Dismissal

Download Fifth Third Relator Share Agreement

Updated October 6, 2015

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA ex rel. GEORGE MANN and JOHN FERGUSON; STATE OF NEW YORK *ex rel.* GEORGE MANN and JOHN FERGUSON; and GEORGE MANN and JOHN FERGUSON individually, Plaintiffs, v. FIFTH THIRD BANCORP and its subsidiaries, Defendants.	11 Civ. 4499 (DAB) ECF Case **STIPULATION AND ORDER OF SETTLEMENT AND DISMISSAL**

WHEREAS, this Stipulation and Order of Settlement and Dismissal ("Stipulation") is entered into by and among plaintiff the United States of America, by its attorney, Preet Bharara, United States Attorney for the Southern District of New York, and on behalf of the United States Department of Housing and Urban Development ("HUD") and the Federal Housing Administration ("FHA"), (collectively, the "United States" or "Government"); George Mann and John Ferguson ("Relators"), by their authorized representatives; and Fifth Third Bancorp and its subsidiaries ("Defendant," "FTB," or the "Bank"), by its authorized representatives (collectively, the "Parties");

WHEREAS, Fifth Third Bank is an Ohio-chartered bank headquartered in Cincinnati, Ohio, and the principal subsidiary of Fifth Third Bancorp, an Ohio-based bank holding company;

WHEREAS, pursuant to the National Housing Act of 1934, FHA offers various mortgage insurance programs through which it insures approved lenders against losses on mortgage loans made to buyers of single-family housing, including the Direct Endorsement Lender program, which authorizes private-sector mortgage lenders ("Direct Endorsement Lenders") to underwrite

mortgage loans, decide whether the borrower represents an acceptable credit risk for HUD, and certify loans for FHA mortgage insurance without prior HUD review or approval;

WHEREAS, because HUD relies on Direct Endorsement Lender s to determine which loans should be endorsed for FHA insurance, it requires that Direct Endorsement Lenders conduct adequate due diligence on loans before certifying them for FHA insurance;

WHEREAS, Direct Endorsement Lenders are also required to maintain an adequate quality control program, which includes self-reporting to HUD in writing within 60 days of initial discovery any loans identified during quality reviews that are affected by serious deficiencies, patterns of non-compliance, or fraud;

WHEREAS, Direct Endorsement Lenders make a number of certifications to HUD, including annual certifications and individual loan certifications;

WHEREAS, in the annual certification, the Direct Endorsement Lender represents, *inter alia*, that it conforms to all HUD-FHA regulations necessary to maintain its HUD-FHA approval, and among the basic requirements necessary to maintain such approval is the implementation of a compliant quality control program, including timely self-reporting to HUD any loans affected by serious deficiencies, patterns of non-compliance, or fraud;

WHEREAS, in the individual loan certification, the Direct Endorsement Lender represents, *inter alia*, that each mortgage is eligible for HUD mortgage insurance under the Direct Endorsement program;

WHEREAS, on or about June 30, 2011, Relators filed a complaint under the *qui tam* provisions of the False Claims Act, as amended, 31 U.S.C. § 3729 *et seq*., and on or about November 12, 2012, Relators filed an amended complaint alleging, *inter alia*, that FTB used

fraudulently inflated appraisals in connection with its origination of residential mortgage loans (collectively, the "*qui tam* complaint");

WHEREAS, FTB is and has been a Direct Endorsement Lender since at least 2003 and has submitted annual certifications and individual loan certifications to HUD;

WHEREAS, in 2012, without knowledge of the Government's investigation of FTB's FHA originations and the conduct alleged in the *qui tam* complaint, FTB made a voluntary disclosure to the Government of certain residential mortgage loans that FTB had originated and certified to HUD as eligible for FHA insurance, had later found through post-closing quality reviews were in fact materially defective and not eligible for FHA insurance, but had failed timely to disclose to HUD pursuant to HUD requirements;

WHEREAS, in 2014, FTB made a supplemental voluntary disclosure to the Government identifying residential mortgage loans that FTB had originated and certified to HUD as eligible for FHA insurance during 2003 through 2013, had later found through post-closing quality control reviews were in fact materially defective and not eligible for FHA insurance, but had failed timely to disclose to HUD pursuant to HUD requirements;

WHEREAS, of the 1,439 materially defective loans that FTB voluntarily disclosed to the Government, HUD paid insurance claims on 519 of those loans (identified by FHA case number in Exhibit A hereto), and no insurance claims have been submitted to HUD for 920 of the loans (identified by FHA case number in Exhibit B hereto);

WHEREAS, the Government contends that it has certain civil claims against FTB with respect to FHA loans for which HUD paid claims for FHA insurance, namely: (1) failing timely to self-report to HUD residential mortgage loans that FTB had originated during 2003 through 2013 (the "Covered Period") and certified to HUD as eligible for FHA insurance, but

subsequently determined were materially defective and thus not eligible for FHA insurance; (2) submitting individual loan certifications to HUD for the loans identified in Exhibit A falsely representing that such loans were eligible for FHA insurance when that was not the case; and (3) submitting annual certifications to HUD falsely representing that FTB conformed to all HUD-FHA regulations necessary to maintain HUD-FHA approval during the Covered Period when, in fact, FTB had failed to comply with HUD self-reporting requirements (the "Covered Conduct"); and

WHEREAS, the Parties have reached a full and final mutually agreeable resolution of the Government's claims for the Covered Conduct as set forth below;

NOW, THEREFORE, IT IS HEREBY ORDERED that:

TERMS AND CONDITIONS

1. The Court's subject matter jurisdiction is undisputed and Defendant consents to the Court's exercise of personal jurisdiction over it.

2. FTB admits, acknowledges and accepts responsibility for the following conduct:

   a. FTB has been a HUD-FHA Direct Endorsement Lender since at least 2003.

   b. To maintain its HUD-FHA approval, FTB was required to implement and maintain a quality control program. To comply with HUD's quality control requirements, FTB was required, among other things, to: (1) review a prescribed sample of all closed loan files to ensure they were underwritten in accordance with HUD guidelines; and (2) report to HUD (along with the supporting documentation) any serious deficiencies, patterns of non-compliance, or fraud that FTB uncovered during the normal course of business and by quality control staff during reviews of FHA loans within 60 days of the initial discovery.

   c. FTB made annual certifications to HUD that it conformed to all HUD-FHA regulations necessary to maintain its HUD-FHA approval, which included the implementation of a mandatory quality control program by which FTB reported to HUD all serious deficiencies, patterns of non-compliance, or fraud. FTB also made individual loan certifications to HUD that each loan was eligible for FHA insurance.

d. From 2003 through 2013, FTB's quality control program identified through post-closing reviews 1,436 residential mortgage loans that FTB had originated and certified to HUD as eligible for FHA insurance that were materially defective and thus ineligible for FHA insurance. FTB failed timely to self-report these materially defective loans to HUD pursuant to HUD requirements. HUD paid insurance claims with respect to 519 of these mortgage loans after they defaulted.

e. In 2012 and 2014, FTB voluntarily disclosed all known materially defective loans to the Government. FTB advised the Government in connection with its voluntary disclosure that FTB had taken steps to reform its quality control program, including terminating the employment of personnel responsible for FTB's failure to self-report materially defective loans to HUD.

3. FTB shall pay $84,911,018 (the "Settlement Amount") to the Government within thirty calendar days of the Effective Date. Payment of the Settlement Amount shall be made at https://www.pay.gov to the U.S. Department of Justice account in accordance with written instructions to be provided within ten calendar days of the Effective Date by the Financial Litigation Unit of the United States Attorney's Office for the Southern District of New York.

4. FTB agrees to indemnify HUD for all losses sustained by HUD at any time related to the mortgage loans identified in Exhibit B pursuant to a written indemnification agreement to be entered into between FTB and HUD. FTB represents that it has conducted a diligent search of its records and that, other than the loans identified in Exhibits A and B, there are no other FHA loans that FTB knew from its quality reviews were materially defective and failed timely to self-report to HUD. If this representation proves to be false and there are additional FHA loans that FTB knew from its quality reviews were materially defective and failed timely to self-report to HUD, then the release in Paragraph 5 below shall not apply to such additional loans, absent the Government's written consent thereto.

5. Subject to the exceptions in Paragraph 9 below, conditioned upon FTB's full compliance with the terms of this Stipulation, and subject to Paragraphs 15 and 16 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date or the date

of any payment made under this Stipulation), the Government, on behalf of its officers, agencies and departments (including HUD and FHA), releases FTB and all of its current and former officers, directors, employees, parents, subsidiaries, affiliates, and assigns ("Released Parties") from any civil or administrative monetary claim that the United States has for the Covered Conduct under the False Claims Act ("FCA"), 31 U.S.C. § 3729 *et seq.*; the Financial Institutions Reform, Recovery, and Enforcement Act ("FIRREA"), 12 U.S.C. § 1833a; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. § 3801 *et seq.*; and common law theories of negligence, gross negligence, payment by mistake, unjust enrichment, indemnification, fraud, money had and received, misrepresentation, deceit, mistake of fact, and breach of fiduciary duty, and aiding and abetting any of the foregoing. Subject to the exceptions and conditions set forth in this Paragraph, HUD also releases the Released Parties from any administrative monetary claim that HUD has for the Covered Conduct pursuant to HUD's Mortgagee Review Board authority, 12 U.S.C. §1708 and 24 C.F.R. Part 25, HUD's civil monetary penalty authority, 12 U.S.C. § 1735f-14 and 24 C.F.R. Part 30, and HUD's Program Fraud Civil Remedies Act authority, 24 C.F.R. Part 28.

6. Subject to the exceptions and conditions set forth in Paragraphs 4 and 5, HUD releases the Released Parties from any administrative monetary claim that HUD has for the loans identified in Exhibit B pursuant to HUD's Mortgagee Review Board authority, 12 U.S.C. §1708 and 24 C.F.R. Part 25, HUD's civil monetary penalty authority, 12 U.S.C. § 1735f-14 and 24 C.F.R. Part 30, and HUD's Program Fraud Civil Remedies Act authority, 24 C.F.R. Part 28.

7. Subject to FTB's full compliance with the terms of this Stipulation, Relators, for themselves and for their heirs, successors, and assigns, release the Released Parties from any and all claims Relators have asserted, or could have asserted, or may assert in the future for the

conduct alleged in the *qui tam* complaint, including without limitation any claims that Relators have on behalf of the Government for the Covered Conduct and/or the conduct alleged in the *qui tam* complaint; provided, however, that nothing in this Stipulation shall preclude Relators from seeking to recover attorneys' fees, costs and expenses from FTB, pursuant to 31 U.S.C. § 3730(d).

8. FTB releases the United States, its agencies, officers, agents, employees, and servants, as well as Relators, their heirs, successors, attorneys, agents, and assigns, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that FTB has asserted, could have asserted, or may assert in the future, against the United States, its agencies, officers, agents, employees, and servants, as well as Relators, their heirs, successors, attorneys, agents, and assigns, related to the Covered Conduct and the United States' and/or Relators' investigation and prosecution thereof.

9. Notwithstanding the release given in Paragraph 5 above, or any other term of this Stipulation, the following claims of the United States are specifically reserved and are not released:

a. Any liability arising under Title 26 of the United States Code (Internal Revenue Code);

b. Any criminal liability;

c. Except as explicitly stated in this Stipulation, including Paragraphs 5 and 6 above, any administrative liability, including the suspension and debarment rights of any federal agency;

d. Any liability arising from (i) FTB's underwriting of FHA loans (other than the loans identified in Exhibit A), (ii) any failure to maintain or implement an adequate

quality control program (other than failures to comply with HUD self-reporting requirements), (iii) any submission of false certifications to HUD-FHA (other than the individual loan certifications for the loans identified in Exhibit A and any annual certifications solely to the extent such certifications apply to HUD self-reporting requirements), and (iv) any other conduct that violates HUD-FHA rules or requirements (other than the Covered Conduct);

e. Any liability related to non-FHA mortgage loans;

f. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct, or for any conduct occurring outside the Covered Period; and

g. Any liability based upon obligations created by this Stipulation.

10. FTB shall be in default of this Stipulation if it fails to pay the Settlement Amount as set forth in Paragraph 3 above or to comply materially with any other obligations under this Stipulation ("Default"). The Government shall provide written notice to FTB of any Default, to be sent in the manner set forth in Paragraph 24 below. FTB shall then have an opportunity to cure the Default within seven business days from the date of receipt of the notice of Default. In the event that a Default involving failure to pay the Settlement Amount is not fully cured within seven business days of the receipt of the notice of Default ("Uncured Default"), the full Settlement Amount shall be immediately due and payable, and interest shall accrue at the rate of nine percent per annum compounded annually on the remaining unpaid principal balance, beginning seven business days after mailing of the notice of Default. In the event of FTB's failure to pay the Settlement Amount as set forth in Paragraph 3 above, FTB agrees to the entry of a consent judgment in the form attached hereto as Exhibit C. In the event of an Uncured Default, FTB further agrees that the United States, at its option, may (a) rescind this Stipulation

and reinstate the Complaint; (b) seek specific performance of this Stipulation; (c) offset the remaining unpaid balance of the Settlement Amount from any amounts due and owing FTB by any department, agency, or agent of the United States; or (d) exercise any other rights granted by law, or under the terms of this Stipulation, or recognizable at common law or in equity. FTB shall not contest any offset imposed or any collection undertaken by the Government pursuant to this Paragraph, either administratively or in any court. In addition, FTB shall pay the Government all reasonable costs of collection and enforcement under this Paragraph, including attorneys' fees and expenses. In the event that this Stipulation is rescinded pursuant to this Paragraph, FTB shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that relate to the Covered Conduct, except to the extent such defenses were available on the Effective Date.

11. Relators and their heirs, successors, attorneys, agents, and assigns shall not object to this Stipulation, and agree and confirm that this Stipulation is fair, adequate, and reasonable, pursuant to 31 U.S.C. § 3730(c)(2)(B). Subject to any claims that Relators may have under 31 U.S.C. § 3730(d) for a share of the Settlement Amount, which Relators are not releasing, Relators, for themselves individually, and for their heirs, successors, attorneys, agents, and assigns, release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Relators have asserted, could have asserted, or may assert in the future, against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and/or arising from the filing of the *qui tam* Complaint and from any claims under 31 U.S.C. § 3730.

12. FTB waives and shall not assert any defenses it may have to any criminal prosecution relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause of the Fifth Amendment of the Constitution or under the Excessive Fines Clause of the Eighth Amendment of the Constitution, this Stipulation bars a remedy sought in such criminal prosecution. Nothing in this Paragraph or any other provision of this Stipulation constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

13. FTB agrees to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of FTB, and its present or former officers, directors, employees, shareholders, and agents in connection with:

(1) the matters covered by this Stipulation;

(2) the United States' audit(s) and civil investigation(s) of the matters covered by this Stipulation;

(3) FTB's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and investigation(s) in connection with the matters covered by this Stipulation (including attorneys' fees);

(4) the negotiation and performance of this Stipulation; and

(5) the payment FTB makes to the United States pursuant to this Stipulation are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by FTB, and FTB shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 calendar days of the Effective Date of this Stipulation, FTB shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by FTB or any of its subsidiaries or affiliates from the United States. FTB agrees that the United States, at a minimum, shall be entitled to recoup from FTB any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine FTB's books and records and to disagree with any calculations submitted by FTB or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by FTB, or the effect of any such Unallowable Costs on the amount of such payments.

14. Except as expressly provided in this Stipulation, this Stipulation is intended to be for the benefit of the Parties and Released Parties only. The Parties are not releasing any claims against any other person or entity except as expressly provided in this Stipulation.

15. FTB represents and warrants that it has reviewed its financial situation, that it is currently not insolvent as such term is defined in 11 U.S.C. § 101(32) and that it reasonably believes that it shall remain solvent following payment to the Government of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Stipulation, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a

contemporaneous exchange for new value given to FTB, within the meaning of 11 U.S.C. § 547(c)(1); and (b) have concluded that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which FTB was or became indebted to on or after the date of this Stipulation, within the meaning of 11 U.S.C. § 548(a)(1).

16. If within 91 days of the Effective Date of this Stipulation or any payment made under this Stipulation, FTB commences any case, action, or other proceeding under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors or a third party commences any case, action, or other proceeding under any law related to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking an order for relief of FTB's debts, or seeking to adjudicate FTB as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for FTB or for all or part of FTB's assets, FTB agrees as follows:

a. FTB's obligations under this Stipulation may not be avoided pursuant to 11 U.S.C. § 547, and FTB shall not argue or otherwise take the position in any such case, action, or proceeding that (i) FTB's obligations under this Stipulation may be avoided under 11 U.S.C. § 547; (ii) FTB was insolvent at the time this Stipulation was entered into; or (iii) the mutual promises, covenants, and obligations set forth in this Stipulation do not constitute a contemporaneous exchange for new value given to FTB.

b. If any of FTB's obligations under this Stipulation are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under

the Bankruptcy Code, the Government, at its option, may rescind the release in this Stipulation and bring any civil and/or administrative claim, action, or proceeding against FTB for the claims that would otherwise be covered by the release in Paragraph 5 above. FTB agrees that (i) any such claim, action, or proceeding brought by the Government would not be subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the case, action, or proceeding described in the first sentence of this Paragraph, and FTB shall not argue or otherwise contend that the Government's claim, action, or proceeding is subject to an automatic stay; (ii) FTB shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any claim, action, or proceeding that is brought by the Government within 60 calendar days of written notification to FTB that the release has been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date; and (iii) the Government has a valid claim against FTB in the amount of $10 million and the Government may pursue its claim in the case, action, or proceeding described in the first sentence of this Paragraph, as well as in any other case, action, or proceeding.

c. FTB acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Stipulation.

17. Each Party shall bear its own and its employees' legal and other costs incurred in connection with this matter, including the preparation and performance of this Stipulation.

18. Any failure by the Government to insist upon the strict performance of any of the provisions of this Stipulation shall not be deemed a waiver of any of the provisions hereof, and the Government, notwithstanding that failure, shall have the right thereafter to insist upon strict performance of any and all of the provisions of this Stipulation.

19. This Stipulation is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Stipulation is the United States District Court for the Southern District of New York. For purposes of construing this Stipulation, this Stipulation shall be deemed to have been drafted by all Parties to this Stipulation and shall not, therefore, be construed against any Party in any subsequent dispute.

20. Subject to the exceptions set forth in this Stipulation, and in consideration of the obligations of FTB set forth in this Stipulation, and conditioned upon FTB's full compliance with the terms of this Stipulation, and Relator's right to seek attorneys' fees, costs and expenses from FTB pursuant to 31 U.S.C. § 3730(d) and a share of the Settlement Amount from the Government pursuant to 31 U.S.C. § 3730(d), Relators shall dismiss with prejudice the *qui tam* Complaint; provided, however, that the Court shall retain jurisdiction over this Stipulation and each Party to enforce the obligations of each Party under this Stipulation, as well as to resolve any dispute concerning any claim Relators may assert for attorneys' fees, costs and expenses pursuant to 31 U.S.C. § 3730(d), or a share of the Settlement Amount pursuant to 31 U.S.C. § 3730(d).

21. This Stipulation constitutes the complete agreement between the Parties. This Stipulation may not be amended except by written consent of the Parties.

22. The undersigned counsel represent and warrant that they are fully authorized to execute this Stipulation on behalf of the persons and entities indicated below.

23. This Stipulation may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Stipulation. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Stipulation.

24. Any notice pursuant to this Stipulation shall be in writing and shall, unless expressly provided otherwise herein, be delivered by express courier and by e-mail transmission, followed by postage-prepaid mail, to the following representatives:

To the Government:

Pierre G. Armand
Assistant United States Attorney
86 Chambers Street
New York, New York 10007
Tel: (212) 637-2724
Fax: (212) 637-2686
Email: pierre.armand@usdoj.gov

To FTB:

Helen V. Cantwell, Esq.
Debevoise & Plimpton LLP
919 Third Avenue
New York, NY 10022
Tel: (212) 909-6312
Fax: (212) 909-6836
Email: hvcantwell@debevoise.com

25. The effective date of this Stipulation is the date upon which this Stipulation is entered by the Court (the "Effective Date").

Dated: Sept. 30, 2015
New York, New York

PREET BHARARA
United States Attorney
Southern District of New York

By: _____
PIERRE G. ARMAND
Assistant United States Attorney
86 Chambers Street
New York, New York 10007
Tel: (212) 637-2724
Fax: (212) 637-2686
Email: Pierre.Armand@usdoj.gov

Dated: _____, 2015
New York, New York

DEBEVOISE & PLIMPTON LLP

By: _____
HELEN V. CANTWELL
919 Third Avenue
New York, NY 10022
Tel: (212) 909-6312
Fax: (212) 909-6836
Email: hvcantwell@debevoise.com

Attorney for Fifth Third Bank

Dated: _____, 2015
New York, New York

KENNEY & McCAFFERTY

By: _____
BRIAN P. KENNEY
KATHRYN M. SCHILLING
1787 Sentry Parkway West
Building 18, Suite 410
Blue Bell, PA 19422
Tel: 215.367.4333
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Email: kschilling@kenneymccafferty.com

Attorney for the Relator

Dated: _____, 2015
New York, New York

PREET BHAHARA
United States Attorney
Southern District of New York

By: _____
PIERRE G. ARMAND
Assistant United States Attorney
86 Chambers Street
New York, New York 10007
Tel: (212) 637-2724
Fax: (212) 637-2686
Email: Pierre.Armand@usdoj.gov

Dated: Sept 29, 2015
New York, New York

DEBEVOISE & PLIMPTON LLP

By: _____
HELEN V. CANTWELL
919 Third Avenue
New York, NY 10022
Tel: (212) 909-6312
Fax: (212) 909-6836
Email: hvcantwell@debevoise.com

Attorney for Fifth Third Bank

Dated: _____, 2015
New York, New York

KENNEY & McCAFFERTY

By: _____
BRIAN P. KENNEY
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1787 Sentry Parkway West
Building 18, Suite 410
Blue Bell, PA 19422
Tel: 215.367.4333
Fax: 215.367.4335
Email: kschilling@kenneymccafferty.com

Attorney for the Relator

Dated: _____, 2015
New York, New York

PREET BHARARA
United States Attorney
Southern District of New York

By: _____
PIERRE G. ARMAND
Assistant United States Attorney
86 Chambers Street
New York, New York 10007
Tel: (212) 637-2724
Fax: (212) 637-2686
Email: Pierre.Armand@usdoj.gov

Dated: _____, 2015
New York, New York

DEBEVOISE & PLIMPTON LLP

By: _____
HELEN V. CANTWELL
919 Third Avenue
New York, NY 10022
Tel: (212) 909-6312
Fax: (212) 909-6836
Email: hvcantwell@debevoise.com

Attorney for Fifth Third Bank

Dated: 9/29, 2015
New York, New York

KENNEY & McCAFFERTY

By: _____
BRIAN P. KENNEY
KATHRYN M. SCHILLING
1787 Sentry Parkway West
Building 18, Suite 410
Blue Bell, PA 19422
Tel: 215.367.4333
Fax: 215.367.4335
Email: kschilling@kenneymccafferty.com

Attorney for the Relator

Dated: Sept 29, 2015

STENGLE LAW

By: _____

LINDA J. STENGLE
9 Lenswood Drive
Boyertown, PA 19512
Tel: (610) 367-1604
Email: linda@lindastengle.com

Attorney for the Relator

Dated: _____, 2015

_____
GEORGE MANN
Relator

Dated: _____, 2015

_____
JOHN FERGUSON
Relator

Dated: _____ ___, 2015
New York, New York

SO ORDERED:

_____
HON. DEBORAH A. BATTS
UNITED STATES DISTRICT JUDGE

Dated: _____, 2015

STENGLE LAW

By: _____
LINDA J. STENGLE
9 Lenswood Drive
Boyertown, PA 19512
Tel: (610) 367-1604
Email: linda@lindastengle.com

Attorney for the Relator

Dated: 9/23, 2015

GEORGE MANN
Relator

Dated: _____, 2015

JOHN FERGUSON
Relator

Dated: _____ ___, 2015
New York, New York

SO ORDERED:

HON. DEBORAH A. BATTS 10/5/15
UNITED STATES DISTRICT JUDGE

Dated: _____, 2015

STENGLE LAW

By: _____
LINDA J. STENGLE
9 Lenswood Drive
Boyertown, PA 19512
Tel: (610) 367-1604
Email: linda@lindastengle.com

Attorney for the Relator

Dated: _____, 2015

_____
GEORGE MANN
Relator

Dated: _____, 2015

_____
JOHN FERGUSON
Relator

Dated: _____ ___, 2015
New York, New York

SO ORDERED:

_____
HON. DEBORAH A. BATTS
UNITED STATES DISTRICT JUDGE

EXHIBIT A

FHA Case Nos.		
0116104310	1373327767	1374947915
0116483657	1373819692	1374948180
0116643059	1374029335	1374978783
0116805233	1374053879	1374982511
0524673604	1374099307	1374990726
0524714966	1374184798	1374995470
0524748492	1374193777	1375000400
0524859537	1374216753	1375010256
0524874744	1374242543	1375039374
0525011040	1374273268	1375077025
0525042684	1374278309	1375083299
0525120405	1374326281	1375085254
0525411878	1374390664	1375085327
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0936092781	1374457460	1375120934
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1054430845	1374857849	1519060247
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3818591546	4125482039	4134661084
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EXHIBIT B

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EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA ex rel. GEORGE MANN and JOHN FERGUSON; STATE OF NEW YORK *ex rel.* GEORGE MANN and JOHN FERGUSON; and GEORGE MANN and JOHN FERGUSON individually, Plaintiffs, v. FIFTH THIRD BANCORP and its subsidiaries, Defendants.	11 Civ. 4499 (DAB) ECF Case **CONSENT JUDGMENT**

Upon the consent of plaintiff the United States of America (the "Government") and defendant Fifth Third Bancorp and its subsidiaries ("FTB"), following entry of a stipulation and order of settlement and dismissal; it is hereby

ORDERED, ADJUDGED AND DECREED: that the Government is awarded judgment in the sum of $84,911,018 as of September 23, 2015, as against FTB and any and all applicable post-judgment interest as permitted by law.

Consented to by:

Dated: _____, 2015
New York, New York

PREET BHAHARA
United States Attorney
Southern District of New York

By: _____
PIERRE G. ARMAND
Assistant United States Attorney
86 Chambers Street
New York, New York 10007
Tel: (212) 637-2724
Fax: (212) 637-2686
Email: Pierre.Armand@usdoj.gov

Dated: _____, 2015
New York, New York

DEBEVOISE & PLIMPTON LLP

_____
By: HELEN V. CANTWELL
919 Third Avenue
New York, NY 10022
Tel: (212) 909-6312
Fax: (212) 909-6836
Email: hvcantwell@debevoise.com

Attorney for Fifth Third Bank

Dated: _____ ___, 2015
New York, New York

SO ORDERED:

_____
HON. DEBORAH A. BATTS
UNITED STATES DISTRICT JUDGE

FITB Agrees to $25m Mortgage Repurchase Claims Settlement with Freddie Mac

retailbanking.banking-business-review.com | November 27, 2013

By Thomas Grillo

Fifth Third Bancorp (FITB) has agreed to reimburse $25m to Freddie Mac to resolve certain repurchase claims associated with mortgage loans originated and sold prior to 1 January 2009.

Under the terms of the agreement, FITB will make a cash payment of $25m to Freddie Mac, after paid claim credits and other adjustments.

The lender said that its mortgage representation and warranty reserves associated with the loans covered by the agreement were fully sufficient to cover the payment amount, as of 30 September 2013.

Fifth Third inked a tentative agreement with the US Securities and Exchange Commission (SEC) to settle a probe into its accounting for commercial real estate loans in 2008.

Both Fannie Mae and Freddie Mac busted during the financial crisis of 2008, due to the high exposure of faulty residential mortgage backed securities (RMBS) and were subsequently injected with nearly $187.5bn by the US government to keep them running.

http://www.certifiedforensicloanauditors.com/articles/11.13/FITB-agrees-to-25M-mortgage-repurchase-claims-settlement-with-freddie-mac.html