

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Loise  
Justice

PART 500

Joseph S. ...

INDEX NO. 002453 104

MOTION DATE 10/19/09

MOTION SEQ. NO. 001

MOTION CAL. NO. \_\_\_\_\_

- v -

St. ... Chase et al

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

PAPERS NUMBRED:

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion is resolved in accordance with the attached order

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 10/15/09

[Signature] J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

PRESENT HON. RICHARD B. LOWE III,  
Justice of the Supreme Court:

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

-----X  
JOSEPH SICILIANO,  
on Behalf of Himself and all Others  
Similarly Situated,

Plaintiff,

v.

JPMORGAN CHASE & CO. and  
JPMORGAN CHASE BANK, N.A.,

Defendants  
-----X

: Index No. 602453/08

: ~~REDACTED~~ ORDER CONDITIONALLY  
: CERTIFYING SETTLEMENT CLASS,  
: PRELIMINARILY APPROVING  
: SETTLEMENT AND FORM OF NOTICE  
: AND SCHEDULING A FAIRNESS  
: HEARING

THE NAMED Plaintiff in this proceeding, Joseph Siciliano, on behalf of himself and others similarly situated ("Plaintiffs"), by and through their attorneys, and Defendant JPMorgan Chase Bank, N.A. ("Chase" or "Defendant") have entered into a settlement agreement dated August 13, 2009 (the "Settlement Agreement"), to settle the above-captioned litigation (the "Action" or "Litigation") in its entirety, and Plaintiff has filed an Order to Show Cause as to why this Order should not be entered to which Defendants have not opposed or consented to the entry of this Order; and the Court having reviewed the Settlement Agreement, the affirmation submitted in support thereof, the proposed notice by mail, and other papers filed in this Action, and the Court having due consideration thereon,

NOW, it is hereby:

ORDERED, that pursuant to CPLR § 902, the Court conditionally certifies this Action to proceed as a class action on behalf of a "Settlement Class" consisting of all persons who had an outstanding balance on their EQUITYLINK home equity loan serviced by Chase at any time

...ing the period October 1, 2007 through and including June 15, 2008, and made a payment of interest on that balance.

**ORDERED**, Jeffrey Klafter, Klafter Olsen & Lesser LLP, is appointed as Class Counsel;

**ORDERED**, the Court hereby preliminarily approves the Settlement Agreement as sufficiently fair, reasonable, and adequate to allow dissemination of a notice of the proposed settlement to Plaintiff and the Settlement Class; and it is further

**ORDERED**, approval is hereby given to the form of Notice of Pendency and Settlement of Class Action ("Notice") attached hereto as Exhibit 1, and Chase shall send the Notice as required by the Settlement Agreement; and it is further

**ORDERED**, the Notice meets the requirements of CPLR 904 and the requirements of due process, and constitutes the best notice practicable under the circumstances. The Notice shall constitute due and sufficient notice to all persons or entities to whom they are directed; and it is further

**ORDERED**, that Chase may retain Rust Consulting at its own expense as Settlement Administrator to assist Chase in providing notice of the Settlement and in disbursing settlement funds in accordance with the Settlement Agreement; and it is further

**ORDERED**, that any member of the Settlement Class member who wishes to be excluded from the settlement shall comply with the terms of the Notice and shall have their request for exclusion post marked not later than fourteen (14) days prior to the date of the Fairness Hearing. Any member of the Settlement Class who requests timely and valid exclusion from the settlement shall not be bound by any orders or judgments entered in this Action, and shall not be entitled to receive any benefits provided by the Settlement Agreement in the event that it is finally approved by the Court. The Plaintiff, and any Settlement Class member who

does not request exclusion as set forth in the Notice, shall be bound by all proceedings, orders, and judgments of this Court pursuant to the Settlement Agreement; and it is further

**ORDERED**, a member of the Settlement Class who does not timely and validly request exclusion from the settlement and who wishes to object to the proposed Settlement Agreement must comply with the requirements for objections set forth in the Notice and shall have their objection(s) post marked not later than fourteen (14) days prior to the date of the Fairness Hearing. Any member of the Settlement Class who does not object in accordance with the Notice shall not be permitted to object to the Settlement Agreement in this proceeding, unless otherwise ordered by the Court; and it is further

**ORDERED**, that any member of the Settlement Class who does request timely and valid exclusion from the settlement who wishes to be represented by his or her own attorney, at his or her own cost, must comply with the Entry of Appearance requirements set forth in the Notice; and it is further

**ORDERED**, that any member of the Settlement Class who timely and properly files an objection to the Settlement Agreement may appear at the Fairness Hearing in person, or by counsel if an Entry of Appearance is timely and properly filed, and may show cause why the proposed Settlement Agreement should not be approved as fair, reasonable, and adequate; provided, however, that any such person wishing to appear at the Fairness Hearing, whether in person or through counsel, must comply with the requirements for appearing at the Fairness Hearing to present an objection set forth in the Notice. Any member of the Settlement Class who does not comply with these provisions of the Notice shall be barred from speaking or otherwise presenting any views at the Fairness Hearing, unless otherwise ordered by the Court; and it is further

**ORDERED**, that pursuant to § 908 of the CPLR, a hearing (the "Fairness Hearing") shall be held on <sup>2016</sup> ~~January 19, 2009~~ at ~~9:30~~ a.m. before the undersigned at the Supreme Court of the State of New York, New York County, located at 100 Centre Street, New York, NY 10013, for the purpose of determining whether the proposed settlement is fair, reasonable, adequate and should be finally approved by the Court; and it is further

**ORDERED**, that at the Fairness Hearing, the Court also will consider whether the amount of attorneys' fees and reimbursement of litigation costs and expenses provided for Class Counsel in the Settlement Agreement that should be approved by the Court, and whether the award to the Plaintiff as provided in the Settlement Agreement should be approved by the Court; and it is further

**ORDERED**, that the Court reserves the right to adjourn or continue the Fairness Hearing, or to adjourn or continue any further adjournment or continuance thereof, without further notice other than an announcement at the Fairness Hearing or at any adjournment or continuance thereof; and it is further

**ORDERED**, that all discovery and pretrial proceedings in this Action are stayed pending further Order of this Court. The parties are further directed to comply with their respective obligations under the Settlement Agreement; and it is further

**ORDERED**, that pending the final determination of the fairness, reasonableness, and adequacy of the proposed Settlement Agreement, no member of the Settlement Class who has not exercised properly his or her right to be excluded from the settlement may institute or further prosecute any action asserting a claim against the Defendant, based upon, arising out of, or relating to the claims asserted in this Action; and it is further

**ORDERED**, that all papers in support of the Settlement, including proof of compliance with the notice requirements of this Order, shall be filed and served no later than ten (10) days prior to the Fairness Hearing; and it is further

**ORDERED**, that this Court shall have exclusive jurisdiction over this Action, the implementation, administration and enforcement of the Settlement, the determination of all disputed questions of law and fact with respect to the validity of any claim or right of any person to participate in the Settlement, and any other matters arising out of or connected with the Settlement.

ENTER

~~HON. RICHARD B. LOWE III~~  
\_\_\_\_\_  
Hon. Richard B. Lowe III,  
Justice of the Supreme Court

507672.2

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

-----X  
JOSEPH SICILIANO,  
on Behalf of Himself and all Others  
Similarly Situated,

Plaintiff,

v.

JPMORGAN CHASE & CO. and  
JPMORGAN CHASE BANK, N.A.,

Defendants.  
-----X

Index No. 602453/08

**[PROPOSED] NOTICE OF PENDENCY AND PROPOSED SETTLEMENT,  
APPLICATION FOR FEES AND EXPENSES AND FINAL APPROVAL HEARING**

TO: All persons who had an outstanding balance on their EQUITYLINK home equity loan at any time during the period October 1, 2007 through and including June 15, 2008, and made a payment of interest on their loan balance.

If you fit this description, you may be a Class Member in the above captioned class action, pending in the Supreme Court of the State of New York, New York County (the "Lawsuit").

**PURPOSE OF THIS NOTICE**

The purpose of this Notice is to advise you of the Lawsuit and the proposed class action settlement of this Lawsuit ("Class Action Settlement"), and to summarize certain rights you may have in connection with the Class Action Settlement.

As discussed more fully below, the parties have entered into a Settlement Agreement, subject to Court approval. On October 1, 2009, Justice Richard B. Lowe III of the Commercial Division of the Supreme Court of the State of New York, New York County (the "Court"), preliminarily approved the Class Action Settlement, appointed Plaintiff Joseph Siciliano

("Plaintiff") as the Class Representative, and directed that this Notice be sent to the Settlement Class members. A hearing will be held by the Court on \_\_\_\_\_, 2009 at \_\_\_\_\_.m., located at the Supreme Courthouse, 60 Center Street, Room 218, New York, New York, to determine whether the Class Action Settlement is fair, reasonable, and adequate to the members of the Settlement Class and whether the Court should grant final approval to the Class Action Settlement and enter a Judgment requiring the Class Action Settlement to be consummated and providing for the dismissal of the Lawsuit (the "Fairness Hearing"). In addition, at the Fairness Hearing, the Court will consider whether to approve the negotiated amounts set forth in the Settlement Agreement for attorneys' fees and expenses to Class Counsel and for an award to the named Plaintiff for his time and effort in connection with the commencement and proposed resolution of the Lawsuit. Any award of such fees or expenses will not diminish the recovery by the Settlement Class.

#### **SUMMARY OF THE PROCEEDINGS**

On August 22, 2008, Plaintiff filed a proposed class action against defendants JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A. (collectively, "Defendants") alleging JPMorgan Chase Bank, N.A. improperly calculated interest due on his "EQUITYLINK" home equity loan and asserting a claim for breach of contract under New York law. According to the Complaint, the interest rate on Plaintiff's home equity loan is subject to change on a monthly basis. The annual percentage rate from which interest is computed each month is determined by subtracting 0.50% from the highest prime rate published in the column labeled "Money Rates" in the Wall Street Journal (the "index") on the last Monday of the prior calendar month. Plaintiff alleges that JPMorgan Chase Bank, N.A. violated the terms of his agreement by failing to use the Index "on the last Monday of the prior calendar month." Instead, Plaintiff alleges that when calculating his

interest rate, JPMorgan Chase Bank, N.A. used the Index from the last Monday two months prior to the month being billed, rather than the last Monday of the prior month, thereby charging him additional interest as interest rates declined during the Class Period.

Defendants deny the Plaintiff's claims and are entering into the Class Action Settlement solely to avoid the costs and burdens of continued litigation. Defendants deny they have done anything wrong and are not admitting that they have done anything wrong by agreeing to settle this Lawsuit.

The Court has not ruled on the merits of the Plaintiff's claims or on the denials and other defenses that would be asserted by Defendants. The Court has, however, conditionally certified a Settlement Class and preliminarily approved the Class Action Settlement. However, the Court will not take any final action until the Fairness Hearing is held.

Counsel for the Plaintiff and the Settlement Class ("Class Counsel") has investigated the facts, analyzed the applicable law, and considered other sources of information necessary to evaluate the fairness of the Class Action Settlement. Based on Class Counsel's review of the facts and the law, and in light of the benefits the Settlement will provide to the members of the Settlement Class, Class Counsel believes the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class. The terms of the Settlement are summarized below.

#### **SUMMARY OF THE PROPOSED SETTLEMENT**

This description of the proposed Settlement is only a summary. For additional details, the proposed Settlement Agreement is on file with the Clerk of the Court and is also available on the website of Class Counsel, [www.klafterolsen.com](http://www.klafterolsen.com).

A. Parties Bound by the Settlement.

If the Settlement becomes Effective (meaning the Court enters a Judgment finally approving the Settlement at or after the Fairness Hearing and that Judgment is not appealed or overturned on appeal), the Settlement will apply to, and conclusively bind all parties to this action, including the named Plaintiff and members of the Settlement Class (except those individuals who opt-out) and the Defendants and their affiliates, as defined in the Settlement Agreement.

The Settlement Class consists of all persons who had an outstanding balance on their EQUITYLINK home equity loan at any time during the period October 1, 2007 through and including June 15, 2008, and made a payment of interest on that loan balance.

B. Credit or Payments to Settlement Class Members.

If the Class Action Settlement is finally approved, within twenty-one (21) days of the Effective Date of the Settlement (the day after a Judgment finally approving the Class Action Settlement is no longer subject to appeal), Defendant JP Morgan Chase, N.A. ("Chase") will refund the full amount of any allegedly excess interest that was charged to each Settlement Class Member between October 1, 2007 and June 15, 2008 to that Class Member's Home Equity Loan account, by crediting any interest currently due on their Home Equity Loan account, or crediting the principal amount if no interest is due. In addition, Settlement Class Members will receive a credit of \$8.00 to the principal balance of their Home Equity Loan account, representing prejudgment interest on the allegedly excess interest charged. In the event any Class Member no longer maintains the account at issue or if there is no outstanding balance on the account, Chase will mail a check representing the interest refund amount, as well as the \$8.00 credit, to that Class Member's last known address. However, there shall only be one credit or payment per

loan, regardless of the number of persons listed on the loan documents. The specific amount each Class member will receive is indicated, by account number, on Exhibit A to this Notice.

C. Fees and Expenses.

The Settlement Agreement also provides that if the Class Action Settlement is finally approved, then within twenty-one (21) days of the Effective Date, and subject to Court approval, Chase shall pay Class Counsel \$21,000 in attorneys' fees and costs. Chase will also pay, subject to Court approval, five thousand dollars (\$5,000) to Plaintiff for his effort in pursuing this litigation. These amounts are in addition to the settlement credit or payments described in paragraph C above and if approved, will not reduce those payments in any way.

D. Release of Defendants from Liability.

If you are a Settlement Class Member and do not submit a timely and valid request for exclusion from the Settlement Class, the Class Action Settlement is approved by the Court, as of the Effective Date, each Settlement Class Member shall, on behalf of his or her selves, his or her assigns, heirs, successors and personal representatives, release and shall be enjoined from asserting, and agree to refrain from proceeding in any way to assert, against Defendants and the Affiliated Entities defined in the Settlement Agreement, any and all claims, actions, causes of action, rights or liabilities based on, arising out of, or in any way relating or pertaining to the claims that were made or that could have been made in the Litigation based on the improper calculation of interest on EQUITYLINK home equity loans serviced by Chase at any time during the period October 1, 2007 through and including June 15, 2008, as alleged in the Complaint, but does not apply to claims relating to the enforcement of the Settlement (the "Released Claims").

**YOUR OPTIONS AS A SETTLEMENT CLASS MEMBER**

You will receive the benefits described above if the Class Action Settlement is finally approved, unless you expressly request to be excluded. Members of the Settlement Class who do not submit a timely and valid request for exclusion from the Settlement Class will be bound by the Judgment approving the Class Action Settlement which includes the release of the Released Claims as well as any other judgment entered by the Court in the Lawsuit. Therefore, any claims that you may have against Defendant arising from the conduct alleged in the Complaint will be forever resolved and cannot be pursued in another lawsuit. **If you do not want to opt-out of the Class Action Settlement, you do not need to do anything to remain a member of the Settlement Class.** Your rights in this lawsuit will be represented by Class Counsel:

Jeffrey A. Klafter  
**KLAFTER OLSEN & LESSER LLP**  
Two International Drive, Suite 350  
Rye Brook, NY 10573  
(914) 934-9200  
www.klafterolsen.com

You may request to opt out of the Class Action Settlement if you send a written and signed request for exclusion setting forth your name (typed or hand-printed), current address, telephone number, Chase EQUITYLINK home equity loan number, and mail it postmarked no later than fourteen (14) prior to the Fairness Hearing, to Class Counsel at the address above. Persons who submit a timely and valid request for exclusion will not be entitled to share in the benefits of the Class Action Settlement described above, nor will they be bound by any judgment entered in this action. If you submit a timely and valid request for exclusion, you may pursue at your own expense whatever legal rights you may have. All requests for exclusion must state "I hereby request to opt out of the proposed settlement in the matter of *Joseph Siciliano v. JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A.*, Index No. 602453/08."

If you desire to object to Court approval of the Class Action Settlement set forth in the Settlement Agreement (including the negotiated amounts for attorneys fees, expenses and payment to the Plaintiff provided therein), you must submit your objections to Class Counsel at the address above and Defense Counsel:

Stephen R. Meinertzhagen  
**BURKE, WARREN, MACKAY & SERRITELLA, P.C.**  
330 North Wabash Avenue, 22nd Floor  
Chicago, Illinois 60611-3607

Your objection must be postmarked or received by Class Counsel and Defense Counsel no later than fourteen (14) days prior to the Fairness Hearing. Please note that it is not sufficient to simply state that you object. You must state the reasons why you believe the Class Action Settlement and/or the negotiated amounts for attorneys' fees, expenses and payment to the Plaintiff provided in the Settlement Agreement, should not be approved by the Court.

You also have the right to appear at the Fairness Hearing scheduled to take place before the Honorable Richard B. Lowe III, on \_\_\_\_\_, 2009, Room 218, at \_\_\_\_\_m., at the Supreme Court of the State of New York, New York County, located at the Supreme Courthouse, 60 Center Street, New York, New York, either in person or through an attorney at your own expense. If you agree with the terms of the Class Action Settlement and to approval of the negotiated amounts for attorneys' fees, expenses and payment to the Plaintiff provided in the Settlement Agreement, it is not necessary for you to appear at the Fairness Hearing or to indicate your approval. If you or counsel of your choosing intends to appear, please be advised that the Fairness Hearing may be adjourned from time to time by the Court at the scheduled hearing, or any adjourned session thereof, without further written notice to you. If you desire to appear at the Fairness Hearing to object to the Class Action Settlement and/or to approval of the negotiated amounts for attorneys fees, expenses and payment to the Plaintiff provided in the Settlement

Agreement, you must submit to Class Counsel and Defense Counsel at the addresses above: (1) a written notice of intent to appear at the Fairness Hearing ("Notice of Appearance"); (2) a written statement of all grounds for the objection; (3) a list of any witnesses you intend to call, and a summary of any testimony to be presented; and (4) any supporting papers, including legal memoranda, that you intend to present to the Court in opposition to Court approval of the Class Action Settlement and/or to approval of the negotiated amounts for attorneys fees, expenses and payment to the Plaintiff provided in the Settlement Agreement. Your Notice of Appearance and papers must list the case name and number indicated above and be postmarked no later than fourteen (14) days prior to the Fairness Hearing.

Class Counsel is obligated to file with the Court copies of any objections or Notices of Appearance submitted by Settlement Class members who are not represented by counsel to give the Court an opportunity to consider any such objections and Notices of Appearance. Objectors who are represented by counsel must file their own objections and Notices of Appearance with this Court.

Any Class member who does not submit a written objection to Court approval of the Class Action Settlement or to approval of the negotiated amounts for attorneys fees, expenses and payment to the Plaintiff provided in the Settlement Agreement in the manner and within the time set forth above will be deemed to have waived any such objection, unless otherwise ordered by the Court.

In its Order giving provisional approval to the Settlement Agreement, the Court considered these matters on a preliminary basis and determined that the Settlement Agreement is sufficiently fair, reasonable, and adequate to be given conditional approval. The Court's conditional approval, however, does not mean that the Court will necessarily grant final approval

of the Settlement Agreement. The Court retains the full authority to disapprove the Settlement Agreement in its entirety. If, after the scheduled Fairness Hearing, the Court determines that the Settlement is not fair, reasonable and adequate, the Court will not approve the Settlement Agreement and the lawsuit will proceed as if no settlement had been reached and no Settlement Agreement had been executed.

#### **ADDITIONAL INFORMATION**

This Notice summarizes the Class Action Settlement and certain terms of the Settlement Agreement. You should satisfy yourself that you have read carefully this Notice, which summarizes the Settlement Agreement, and that you understand its terms. More details are contained in the Settlement Agreement that has been filed with the Court and which is available on the website of Class Counsel: [www.klafterolsen.com](http://www.klafterolsen.com). In addition, Plaintiff's submissions in support of the Class Action Settlement and approval of the negotiated amounts for attorneys fees, expenses and payment to the Plaintiff provided in the Settlement Agreement will be on file with the Court.

If you want a copy of the Settlement Agreement, Plaintiff's submissions in support of the Class Action Settlement and approval of the negotiated amounts for attorneys fees, expenses and payment to the Plaintiff provided in the Settlement Agreement when they are filed, or if you have any questions about these matters:

**You May Download these Documents from [www.klafterolsen.com](http://www.klafterolsen.com) and/or Contact Class Counsel at the Number and Addresses Specified Above.**

**Do Not Call the Court or Defendants to Discuss this Matter**

Dated: \_\_\_\_\_, 2009

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