

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA (MIAMI)**

David Kardonick, John David, and Michael
Clemens, individual and on behalf of all
others similarly situated and the general public

Plaintiffs,

v.

JP Morgan Chase & Co., and Chase Bank USA,
N.A.

Defendants.

Case No. 10-CV-23235 (S.D. Florida)

CLASS ACTION

Assigned to: Senior Judge William M.
Hoeverler

MOTION TO QUASH SUBPOENA (FOR DEPOSITION DUCES TECUM)

TO THE HONORABLE WILLIAM M HOEVLER SENIOR U. S. DISTRICT JUDGE:

COMES NOW, Objector William McWhorter, by and through his attorney, and files this Motion to Quash the Subpoena in a Civil case (for Deposition *Duces Tecum*) served upon him in this matter, and respectfully shows unto the Court as follows:

1. Objector, William McWhorter is a member of the Class, having received postcard notice number 4YB4D29, and was enrolled in a payment protection product during the class period and has filed an electronic claim form.
2. The Notice inartfully informed class members that they could submit their objections to the proposed settlement.
3. The undersigned drafted and otherwise prepared Objections which were filed on behalf of Mr. McWhorter (Doc. No. 351).
4. Those Objections which in part raised the issue that the Notice to the class is defective and does not meet minimum constitutional due process requirements of providing class

members with notice and an opportunity to be heard, were filed and served pursuant to the Notice.

5. Other than harassment, there is no reason to depose Objector McWhorter; as he will not be testifying at the fairness hearing and all information necessary to establish his membership in the class was part of the electronic claim form filed by Objector McWhorter.

6. McWhorter has fully complied with the Class Action Notice and should not be subjected to further harassment through the discovery process.

7. The deposition of Objector McWhorter is scheduled to be taken in Gainesville, Florida, which is located in the United States District for the Northern District of Florida.

8. A subpoena for deposition must issue from the court for the district where the deposition is to be taken. Rule 45(a)(2)(B). The Clerk The United States District Court for the Northern District of Florida is Jessica J. Lyublanovits.

9. The subpoena served upon Objector McWhorter, copy attached, was issued by Michael E. Kunz, Clerk of the Court for the Eastern District of Pennsylvania.

10. The subpoena served upon Objector McWhorter issued by Michael E. Kunz, the Clerk of the Court for the United States District Court for the Eastern District of Pennsylvania violates Rule 45(a)(2)(B) FED.R.CIV.P. which, on its face, required Class Counsel to use a Subpoena issued by Jessica J. Lyublanovits The Clerk The United States District Court for the Northern District of Florida, as the Northern District of Florida is the district where the deposition would be taken.

WHEREFORE, Objector McWhorter respectfully request that this Court: quash the subpoena (for deposition *duces tecum*) because the subpoena was improperly issued by the Clerk of the Court for the Eastern District of Pennsylvania in violation of the Rule 45(a)(2)(B) of the

Federal Rules of Civil Procedure, and the deposition amounts to harassment of the objector; and grant such other and further relief as is just and proper.

Respectfully submitted,

/s/ N. Albert Bacharach, Jr.

N. Albert Bacharach, Jr.

Florida Bar No. 209783

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of February, 2011, the foregoing was filed electronically with the Clerk of the Court using the CM/ECF filing system and that Richard M. Golomb, Esq, and all other counsel of record will automatically be notified by the CM/ECF electronic mail system.

/s/ N. Albert Bacharach, Jr.

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