

**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

**MEMORANDUM IN SUPPORT OF WILLIAM MCWHORTER'S  
DUE PROCESS OBJECTION TO THE CLASS NOTICE**

Objector McWhorter raised five violations of constitutional due process on the face of the class notice regarding non-named class members right to notice and an opportunity to be heard. The constitutional due process violations were: The notice subsection on page 1 “Your Legal Rights and Options” is deficient as class members have four, not three, options regarding the proposed settlement; i.e. in addition to “Submit a Claim” “Do Nothing” and “Exclude Yourself From the Case” class members should have been informed “You Can Object to the Proposed Settlement”; The notice fails to inform class members of their right to retain counsel, at their own expense, to review the Proposed settlement and appear at the Fairness Hearing on behalf of the class member; The notice fails to inform class Members that the hearing scheduled for September 9, 2011 is a Fairness Hearing and that the Honorable William M. Hoeverler, Senior U.S. District Judge will be conducting the hearing; The notice fails to inform class members that the Hearing will be at the C. Clyde Adkins, United States Courthouse, 301 North Miami

Avenue, Miami, Florida at 10:30 a.m.; The notice fails to inform class members that based on the evidence presented at the, September 9, 2011 hearing the Court will determine if the proposed settlement is fair, adequate and reasonable.

Non-named class members have a due process right to contest a settlement that may affect their interests. In *Phillips Petroleum Co. v. Shutts* 472 U.S. 797, 811-12 (1985), the Supreme Court held that the Fourteenth Amendment's Due Process Clause guarantees all class members the right to "receive notice plus an opportunity to be heard and participate in the litigation, whether in person or through counsel." And due process also requires that "the named plaintiff at all times adequately represent the interests of the absent class. In this matter that would include assuring that non-named class members get adequate notice.

In *Mullane v. Central Hanover Bank & Trust Co.*, 339 U. S. 306, 314 (1950), the Supreme Court said the right to be heard ensured by the guarantee of due process "has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest."and that (class action must "afford [non-named, absent class members] an opportunity to present their objections"). See also, *Schroeder v. City of New York*, 371 U. S. 208, 212-213 (1962).

Based on the forgoing it is clear that a Notice that fails to inform class members of the name of the presiding judge, fails to inform class members of the name or address of the U.S. District Courthouse, fails to inform class members of the courtroom number or even floor where they might find Judge Hoeveler's courtroom, and fails to inform class members of time of the "hearing" does not provide sufficient notice and an opportunity to be heard to non-named class members to meet constitutional muster.

To correct the open and obvious constitutional deficiencies of the Notice in this matter

the class must be renoticed and the Fairness Hearing rescheduled.

Respectfully submitted,

/s/ N. Albert Bacharach, Jr.  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 8th day of September 2011, the foregoing was filed electronically with the Clerk of the Court using the CM/ECF filing system and that all other counsel of record will automatically be notified by the CM/ECF electronic mail system.

/s/ N. Albert Bacharach, Jr.  
N. Albert Bacharach, Jr.