

IN THE CIRCUIT COURT OF MASON COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA ex rel.  
DARRELL V. MCGRAW, JR., ATTORNEY  
GENERAL,

Plaintiff,

v.

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

Defendants.

Case No. 11-C-094-N

Hon. David Nibert

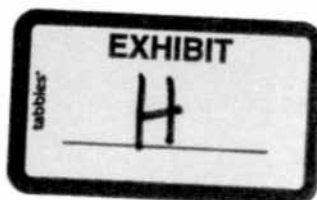
**RESPONSES AND OBJECTIONS TO  
PLAINTIFF'S FIRST SET OF INTERROGATORIES  
TO JPMORGAN CHASE & CO. AND CHASE BANK USA, N.A.**

Pursuant to Rule 33 of the *West Virginia Rules of Civil Procedure*, Defendants JPMorgan Chase & Co. ("JPMorgan") and Chase Bank USA, N.A. ("Chase") submit the following responses and objections to Plaintiff's First Set of Interrogatories to JPMorgan and Chase (the "Interrogatories").

The responses and objections contained herein are made without in any way waiving or intending to waive, but on the contrary reserving and intending to reserve, the right at any time to revise, supplement, correct, or add to these objections and responses, and to revise, supplement, correct, or add to any production of information.

**SPECIFIC RESPONSES AND OBJECTIONS**

All responses provided below, and all information produced in response to these Interrogatories, are stated and made subject to and without waiving the General Objections set



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forth herein, which are specifically incorporated in each response below. JPMorgan and Chase further respond and object to the Interrogatories as follows:

**INTERROGATORY NO. 1:**

Identify all person or persons responsible for responding, or contributing to the response, to each of the interrogatories contained herein by name, address, telephone number, and relationship to you.

**RESPONSE:**

These responses have been prepared by Chase's counsel. Chase's response to Interrogatory No. 3 identifies Chase employees who contributed to these responses.

To the extent a further response may be sought, Defendants object to this interrogatory on the ground that it seeks information protected by privileges, including without limitation attorney-client privilege and work product immunity.

**INTERROGATORY NO. 2:**

Identify all person or persons responsible for responding, or contributing to the response, to each of the Plaintiffs First Set of Requests for Production of Documents to JPMorgan Chase & Co. and Chase Bank USA, N.A.

**RESPONSE:**

Defendants' responses to Plaintiff's document requests have been prepared by Chase's counsel. Chase's response to Interrogatory No. 3 identifies Chase employees who contributed to Defendants' responses to Plaintiff's document requests.

To the extent a further response may be sought, Defendants object to this interrogatory on the ground that it seeks information protected by privileges, including without limitation attorney-client privilege and work product immunity.

**INTERROGATORY NO. 3:**

Identify all persons known to you to have knowledge of Plaintiff's claims or your defenses in this lawsuit and, for each such person, provide a brief summary of their knowledge and produce all documents in your possession, custody, or control that reflect such knowledge.

**RESPONSE:**

Subject to and without waiving their objections, Defendants state as follows:

Marc Fink has knowledge concerning Chase's defenses in this lawsuit. Mr. Fink is a marketing director for Chase, and his responsibilities include managing Chase's payment protection plans.

To the extent a further response may be sought at this time, Defendants object to this interrogatory on the ground that it is premature. Defendants have filed a motion to dismiss the Attorney General's claims, which if granted would eliminate the need for or substantially narrow the scope of discovery. Chase will supplement this response if appropriate after the Court rules on Defendants' pending motion.

Defendants further object to this interrogatory on the ground that it seeks information protected by privileges, including without limitation attorney-client privilege and work product immunity.

Defendants further object that the request to identify all persons who have knowledge of claims or defenses, to summarize all of such persons' knowledge, and to produce all documents reflecting such knowledge is vague, overbroad, unreasonably burdensome, not a proper request in an interrogatory, and not reasonably calculated to lead to the discovery of relevant, admissible evidence.

**INTERROGATORY NO. 4:**

Identify each person you expect to call as a fact witness at the trial of this action by name, address, home telephone, cell phone, business telephone, last known employment, title and position, and nature and dates of affiliation with any party to this litigation. Describe each person's expected testimony in detail and produce, for each, any statements in your possession, custody, or control authorized by that person that relate to the subject matter of this action.

**RESPONSE:**

Chase anticipates calling Marc Fink as a witness at trial, and Chase will produce all affidavits executed by Mr. Fink to date concerning the subject matter of this case. Chase also reserves the right to call any witnesses necessary to provide testimony for the purpose of admitting documents into evidence.

To the extent a further response may be sought at this time, Defendants object to this interrogatory on the ground that it is premature. Defendants have filed a motion to dismiss the Attorney General's claims, which if granted would eliminate the need for or substantially narrow the scope of discovery. Chase will supplement this response if appropriate after the Court rules on Defendants' pending motion.

Defendants further object to this interrogatory on the ground that it seeks information protected by privileges, including without limitation attorney-client privilege and work product immunity.

Defendants further object that the interrogatory is overbroad, unreasonably burdensome, and not reasonably calculated to lead to the discovery of relevant, admissible evidence, and makes a request that is not a proper request in an interrogatory.

**INTERROGATORY NO. 5:**

Identify each person whom you expect to call as an expert witness at the trial of this action and, for each, provide the subject matter to which said expert is expected to testify, the substance of

the facts and opinions to which said expert is expected to testify, and a summary of the grounds for each opinion held by said expert and produce the following documents:

- a. a copy of his or her report(s) pertaining to this matter;
- b. a list of each civil action in which he or she has been retained and/or testified either on behalf of a defendant or plaintiff and, for each, state the court, docket number, and names of the litigants involved; and
- c. all documents, reports, records, treatises, or other information in any form examined by or referred to by said expert in the formulation of his or her opinions.

**RESPONSE:**

Subject to and without waiving their objections, Defendants state that they have not determined whether they will retain an expert witness to testify at trial. If Defendants elect to do so, they will supplement this response at an appropriate time.

To the extent a further response may be sought at this time, Defendants object to this interrogatory on the ground that it is premature. Defendants have filed a motion to dismiss the Attorney General's claims, which if granted would eliminate the need for or substantially narrow the scope of discovery.

Defendants further object to this interrogatory on the ground that it seeks information protected by privileges, including without limitation attorney-client privilege and work product immunity.

**INTERROGATORY NO. 6:**

List all Ancillary Services you have marketed and/or sold to West Virginia consumers. With respect to each Ancillary Service:

- a. state the dates that the Ancillary Service has been marketed and/or available for purchase by West Virginia consumers;
- b. identify who marketed the Ancillary Service to West Virginia consumers on your behalf;

c. state the amount of revenue you received each year from West Virginia consumers for each year that you sold this Ancillary Service to West Virginia consumers;

d. state the amount of profit you received each year as a result of sales of this Ancillary Service to West Virginia consumers;

e. state the number of West Virginia consumers who paid for the Ancillary Service during each year; and

f. state the number of West Virginia consumers who are currently enrolled in or for the Ancillary Service.

**RESPONSE:**

Chase's payment protection plans were marketed to West Virginia consumers from a date that pre-dates the statute of limitations period through 2011. As of August 31, 2007, approximately 27,000 West Virginia consumers were enrolled in Chase's payment protection plans. About 16,500 additional West Virginia consumers have enrolled since that date. As of November 30, 2011, approximately 13,000 West Virginia consumers were enrolled in Chase's payment protection plans. Chase will provide reasonably available information about the amount of payment protection fees charged to West Virginia consumers during the statute of limitations period upon entry of an appropriate protective order. Chase further states that it does not track the profit it receives from West Virginia consumers who paid payment protection fees.

To the extent that further information may be requested, Defendants object to this interrogatory on the ground that it is premature. Defendants have filed a motion to dismiss the Attorney General's claims, which if granted would eliminate the need for or substantially narrow the scope of discovery.

Because the Complaint contains only minimal and conclusory allegations about products other than payment protection plans, Defendants object to producing information concerning such products. Defendants further object to providing information for the period

before August 1, 2007, in light of limitations issues. Defendants further object to providing additional information on the ground that the interrogatory is vague, ambiguous, unreasonably burdensome, overbroad, and not reasonably calculated to lead to the discovery of relevant, admissible evidence.

**INTERROGATORY NO. 7:**

For each of your Payment Protection Plans, state the number of West Virginia consumers who have paid for the Payment Protection Plan at any time and for whom you do not have a signature or other written consent to be enrolled in the Payment Protection Plan.

**RESPONSE:**

Defendants object to this interrogatory on the ground that the phrase "signature or other written consent" is vague, ambiguous, and irrelevant to this litigation. Under federal regulations, Chase did not need to obtain "a signature or other written consent" to enroll consumers in payment protection plans. Consumers may provide their consent to enroll through many means. For example, customers may provide consent over the phone, either in response to an automated script or during a conversation with a customer service representative; they may enroll in payment protection plans online; and they may enroll in payment protection plans by signing and returning direct mail. Shortly after customers enroll in a payment protection plan, they are mailed documents – such as welcome kits and billing statements – which further establish their consent to enroll in and be charged for payment protection plans.

Defendants further object to this Request on the ground that it is vague, ambiguous, unreasonably burdensome, and not reasonably calculated to lead to the discovery of relevant, admissible evidence. Chase cannot determine the number of West Virginia enrollees who did not submit a written signature in connection with their enrollment in a payment

protection plan without an unreasonably burdensome account-by-account manual review of the accounts that enrolled in payment protection plans.

To the extent further information may be requested, Defendants object to this interrogatory on the ground that it is premature. Defendants have filed a motion to dismiss the Attorney General's claims, which if granted would eliminate the need for or substantially narrow the scope of discovery.

Defendants further object to providing any information from before August 1, 2007, in light of limitations issues.

**INTERROGATORY NO. 8:**

Identify and describe all marketing materials you have used to market your Payment Protection Plans and other Ancillary Services to your West Virginia credit card holders.

**RESPONSE:**

Subject to and without waiving their objections, Defendants state as follows:

Chase has marketed payment protection plans to West Virginia credit card holders through, among other things, telephone offers, direct mail solicitations (both stand-alone mailings and information included with customers' monthly billing statements), on-line offers, and information provided to cardholders when they apply for credit cards.

To the extent further information is requested, Defendants object to this interrogatory on the ground that it is premature. Defendants have filed a motion to dismiss the Attorney General's claims, which if granted would eliminate the need for or substantially narrow the scope of discovery.

Because the Complaint contains only minimal and conclusory assertions about products other than payment protection plans, Defendants object to producing information



concerning such products. Defendants further object to providing any information from before August 1, 2007, in light of limitations issues.

Defendants further object to this interrogatory on the ground that the request to identify and describe "all" marketing materials used to market payment protection plans is vague, ambiguous, overbroad, unreasonably burdensome, and not reasonably calculated to lead to the discovery of relevant, admissible evidence.

**INTERROGATORY NO. 9:**

State the name and address of all third-party telemarketing companies or entities who marketed your Payment Protection Plan(s) to West Virginia consumers.

**RESPONSE:**

Defendants object to this interrogatory on the ground that it is premature. Defendants have filed a motion to dismiss the Attorney General's claims, which if granted would eliminate the need for or substantially narrow the scope of discovery. Defendants further object to this interrogatory on the ground that it is vague and ambiguous, overly broad, and unlikely to lead to the discovery of relevant, admissible evidence. The use of the term "marketed" is particularly vague and ambiguous.

**INTERROGATORY NO. 10:**

Identify all persons who trained telemarketers to market your Payment Protection Plan(s) to West Virginia consumers.

**RESPONSE:**

Defendants object to this interrogatory on the ground that it is premature. Defendants have filed a motion to dismiss the Attorney General's claims, which if granted would

eliminate the need for or substantially narrow the scope of discovery. Chase will supplement this response if appropriate after the Court rules on Defendants' pending motion.

Defendants further object to this interrogatory on the ground that it is vague, ambiguous, overbroad, unreasonably burdensome, and not reasonably calculated to lead to the discovery of relevant, admissible evidence.

Defendants further object to this interrogatory on the ground that it seeks information protected by privileges, including without limitation attorney-client privilege and work product immunity.

**INTERROGATORY NO. 11:**

Identify all persons with knowledge about the recording of calls to West Virginia customers, or calls from West Virginia customers, relating to Payment Protection. This interrogatory seeks the names of persons in management as well as technical support managers and key staff members with management duties related to recording the telephone calls.

**RESPONSE:**

Apart from counsel, Marc Fink has knowledge about the recording of calls to or from West Virginia customers relating to payment protection.

To the extent additional information may be requested, Defendants object to this interrogatory on the ground that it is premature. Defendants have filed a motion to dismiss the Attorney General's claims, which if granted would eliminate the need for or substantially narrow the scope of discovery. Chase will supplement this response if appropriate after the Court rules on Defendants' pending motion.

Defendants further object to this interrogatory on the ground that it is vague, ambiguous, overbroad, unreasonably burdensome, and not reasonably calculated to lead to the discovery of relevant, admissible evidence.

Defendants further object to this interrogatory on the ground that it seeks information protected by privileges, including without limitation attorney-client privilege and work product immunity.

**INTERROGATORY NO. 12:**

State your policy for recording calls to and from West Virginia consumers who were subjected to marketing of Payment Protection by you or by anyone on your behalf.

**RESPONSE:**

Chase records portions of sales calls between Chase customer service representatives and customers relating to enrollment in payment protection plans. Chase is preserving all telephone call recordings that it has been able to identify as calls relating to sales of payment protection plans to West Virginia consumers.

To the extent further information may be requested, Defendants object to this interrogatory on the ground that it is premature. Defendants have filed a motion to dismiss the Attorney General's claims, which if granted would eliminate the need for or substantially narrow the scope of discovery. Chase will supplement this response if appropriate after the Court rules on Defendants' pending motion.

Defendants further object to providing any information unrelated to West Virginia consumers. Defendants further object to this interrogatory to the extent it seeks information protected by privileges, including without limitation attorney-client privilege and work product immunity. Defendants further object to this interrogatory on the ground that it is vague, ambiguous, overbroad, and not reasonably calculated to lead to relevant, admissible evidence.

**INTERROGATORY NO. 13:**

Describe any quantitative analysis which was performed to determine the profitability of your Ancillary Services, including, but not limited to, Payment Protection, and

a. with respect to each such analysis, identify the person who performed it and his or her address and job title;

b. with respect to each such analysis, identify the person who supervised the analysis; and

c. identify any report which describes the quantitative analysis regarding the marketing, selling and administration of your Ancillary Services, including but not limited to Payment Protection.

**RESPONSE:**

Defendants object to this interrogatory on the ground that it is premature. Defendants have filed a motion to dismiss the Attorney General's claims, which if granted would eliminate the need for or substantially narrow the scope of discovery. Chase will supplement this response if appropriate after the Court rules on Defendants' pending motion.

Because the Complaint contains only minimal and conclusory assertions about products other than payment protection plans, Defendants object to producing information concerning such products. Defendants further object to providing information unrelated to West Virginia consumers.

Defendants further object to this interrogatory to the extent it seeks information protected by privileges, including without limitation attorney-client privilege and work product immunity.

Defendants further object to this interrogatory on the ground that it is vague, ambiguous, overbroad, and seeks information not reasonably calculated to lead to relevant, admissible evidence. The phrase "quantitative analysis" is particularly ambiguous. Furthermore, Plaintiff is barred from seeking discovery in aid of claims released by the *Kardonick* settlement

and has disavowed any intent to challenge the reasonableness of the fees charged by Chase, rendering a request for profitability analysis irrelevant.

#### **GENERAL OBJECTIONS AND OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS**

1. The following General Objections and Objections to Definitions and Instructions are incorporated in full into all of the specific responses set forth above.
2. Defendants object to the Interrogatories to the extent they seek to litigate claims released by the nationwide class action settlement in *Kardonick, et al. v. JPMorgan Chase & Co., et al.*, No. 10-cv-23235 (S.D. Fla.), which was approved on September 16, 2011. The injunction in connection with the approval of that settlement prohibits the Attorney General and his counsel from litigating released claims, including seeking discovery with respect to those claims.
3. Defendants object to the Interrogatories on the ground that they are premature in light of Defendants' pending motion to dismiss the Attorney General's claims on preemption grounds. The Court's ruling on the motion to dismiss may eliminate all or some of the Attorney General's claims, and thus may eliminate the need for or significantly narrow the scope of discovery. There is no need to provide the requested discovery at this point, especially since providing all of the requested discovery would impose significant expenses and burdens on the Defendants.
4. Defendants object to the Interrogatories on the ground that they are premature in light of Defendants' pending motion to disqualify the Attorney General's outside counsel. The Interrogatories were promulgated, signed, and issued by counsel that Defendants contend should be disqualified from representing the Attorney General. In addition, Defendants

should not be required to meet-and-confer about discovery disputes with counsel that are subject to disqualification.

5. Defendants object to the Interrogatories as premature prior to the entry of an appropriate protective order.

6. If the Court denies Defendants' two pending motions, Defendants will supplement these responses and objections within a reasonable period of time after the Court rules. Defendants will also supplement these responses and objections as may be required by the West Virginia Rules of Civil Procedure.

7. Defendants object to the Interrogatories to the extent they call for information from anyone other than Chase and its employees. JPMorgan had no involvement in the payment protection plans or the alleged conduct at issue in the Complaint and has no responsive information. Furthermore, Chase is not required to produce information that is not in its possession, custody, or control, such as information maintained by third parties.

8. Defendants object to the Interrogatories to the extent they call for information from before August 2007, in light of statute of limitations issues. Defendants' responses generally will cover the period from August 2007 to the present.

9. Because the Complaint contains only minimal and conclusory assertions about products other than payment protection plans, Defendants object to producing information concerning such products. The Attorney General has not articulated grounds for any claims targeting products beyond payment protection plans. Indeed, the only direct reference to products beyond payment protection plans appears in Paragraph 20 of the Complaint. All claims involving products beyond payment protection plans are pleaded in conclusory fashion, and the Complaint fails to provide sufficient notice about the Attorney General's claims.

10. Defendants object to the definitions associated with the terms "Payment Protection" and "Payment Protection Plans." For purposes of responding to the Interrogatories, Defendants have construed those terms to refer to Chase's debt cancellation contracts and debt suspension agreements which are offered to West Virginia consumers.

11. Defendants object to the Interrogatories to the extent that the definitions, instructions, and specific questions incorporated therein are vague, ambiguous, overbroad, or unreasonably burdensome, do not describe the information sought with reasonable particularity, or otherwise exceed or fail to comply with the requirements imposed by the West Virginia Rules of Civil Procedure.

12. Defendants object to the Interrogatories to the extent they seek disclosure of information protected by attorney-client privilege, the work-product immunity doctrine, or any other applicable privilege or protection. Defendants do not waive or intend to waive any such privileges or protections, and any production of privileged or protected information is inadvertent.

13. Defendants object to the Interrogatories to the extent they ask Defendants to produce confidential, proprietary, or other sensitive information. Defendants also object to the Interrogatories to the extent they seek private information relating to Chase cardholders, personally identifying information, or information about individual disputes that is subject to confidentiality obligations. Defendants also object to producing any information relating to or about its non-West Virginia consumers.

14. Defendants object to the Interrogatories to the extent they ask Defendants to provide home and business addresses, telephone numbers, or dates of employment for Chase

employees. Any efforts by the Attorney General to contact such persons should be made through Chase's counsel.

15. Defendants object to Instruction No. 5 to the extent it asserts that any "omission of any name, fact or other item of information from the response shall be deemed a representation that such name, fact or other item was not known to JPMorgan Chase & Co. or Chase Bank USA, N.A., their counsel, or their other representatives at the time of service of the answer." No such inference is contemplated by the West Virginia Rules of Civil Procedure.

16. Defendants object to Instruction Nos. 6 and 9, which make requests for the production of documents and a log of privileged documents that are not appropriate in the context of interrogatories.

17. Defendants object to the defined term "identify" to the extent it (1) purports to require Defendants to provide the requested detailed information about a document, (2) purports to require Defendants to provide the requested detailed information about a fact witness or a fact witnesses' proffered testimony, (3) purports to require Defendants to provide the requested detailed information about a business entity, and (4) purports to require Defendants to provide the requested detailed information about a conversation, communication, transaction, meeting, or conference. No such requirements are imposed by the West Virginia Rules of Civil Procedure, and providing all the requested information would be unreasonably burdensome.

18. Defendants object to the defined terms "state the full factual basis," "describe," and "state" to the extent they purport to require Defendants to provide the requested detailed information. No such requirement is imposed by the West Virginia Rules of Civil Procedure, and providing all the requested information would be unreasonably burdensome.



19. Defendants object to the Interrogatories to the extent they purport to impose requirements that exceed the requirements of the West Virginia Rules of Civil Procedure.

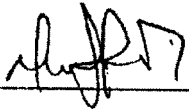
20. Subject to and without waiving its objections, Chase has provided information as indicated above. In addition, Chase remains willing to confer with the Attorney General's counsel to the extent some Interrogatories could be made less objectionable by being narrowed or reformulated.

**VERIFICATION**

STATE OF \_\_\_\_\_,

COUNTY OF \_\_\_\_\_, TO-WIT:

I, Marc Fink, a Marketing Director at Chase Bank USA, N.A., state that I have read the foregoing **RESPONSES AND OBJECTIONS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO JPMORGAN CHASE & CO. AND CHASE BANK USA, N.A.** and that the facts contained therein are true, except insofar as they are therein stated to be upon information and belief, and, insofar as they are therein stated to be upon information and belief, I believe them to be true.

  
\_\_\_\_\_

Name: MARC J. FINK

Title: MARKETING DIRECTOR

Taken, subscribed and sworn to before this 18<sup>th</sup> day of May, 2012 by Marc Fink, in his/her capacity as Marketing Director for JPMorgan Chase, on behalf of said defendant.

My commission expires: September 24, 2012.

  
\_\_\_\_\_  
NOTARY PUBLIC

FAYE D. SUTTON  
NOTARY PUBLIC  
STATE OF DELAWARE  
MY COMMISSION EXPIRES 09-24-2012

Signed as to objections:

DATED: May 18, 2012

Respectfully submitted,

  
William W. Booker (WVSB # 401)

Thomas H. Ewing (WVSB # 9655)

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*Attorneys for Defendants JPMorgan Chase  
& Co. & Chase Bank USA, N.A.*

**CERTIFICATE OF SERVICE**

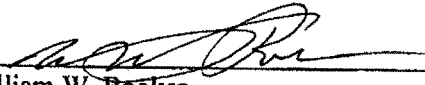
I hereby certify that on the 22<sup>nd</sup> day of May, 2012, I served a copy of Responses and Objections to Plaintiff's First Set of Interrogatories to JPMorgan Chase & Co. and Chase Bank USA, N.A. via first-class mail, postage prepaid and/or electronic mail to the following individuals at the addresses listed below:

Frances A. Hughes  
Chief Deputy of the Attorney General  
Office of the Attorney General  
State Capitol Complex  
Building 1, Room E-26  
Charleston, WV 25305

Guy Bucci  
Timothy Bailey  
Lee Javins  
Special Assistant Attorneys General  
BUCCI BAILEY & JAVINS LC  
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Charleston, WV 25301

William Druckman  
Special Assistant Attorney General  
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\_\_\_\_\_  
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