

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

Case No. 1:10-cv-23235/HOEVELER

DAVID KARDONICK, JOHN DAVID, and
MICHAEL CLEMINS, individually and on
behalf of all others similarly situated and the
general public,

Plaintiffs,

v.

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

Defendants.

**NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF
CHASE'S MOTION FOR A SHOW CAUSE ORDER (DE 456)**

Defendant Chase Bank USA, N.A. ("Chase") respectfully submits this notice to bring to the Court's attention the newly-issued decision in *Esslinger v. HSBC Bank Nevada, N.A.*, No. 10-3213 (E.D. Pa. Nov. 20, 2012) (attached hereto as Exhibit A). The context and procedural posture of the decision were described in advance at page 5 and footnote 4 of Chase's Reply Memorandum in Support of Its Motion for Show Cause Order (DE 464). The relevant portion of the opinion is as follows:

Because they are not Class members, the AGs may continue to bring claims belonging to their respective states, such as state criminal and regulatory actions. However, the AGs are precluded from bringing claims "in a de facto or de jure representative capacity on behalf of the plaintiffs" in this class action, because

doing so would allow Class members to double recover. *See In re Baldwin United Corp.*, 770 F.2d 328, 341 (2d Cir. 1985); *cf. EEOC v. U.S. Steel Corp.*, 921 F.2d 489, 496-97 (3d Cir. 1990) (“Private litigation in which the EEOC is not a party cannot preclude the EEOC from maintaining its own action because private litigants are not vested with the authority to represent the EEOC But when the EEOC seeks to represent grievants by attempting to obtain private benefits on their behalf, the doctrine of representative claim preclusion must be applied.”). Class members were adequately represented and given an opportunity to opt out of the settlement. Allowing the Class members to recover under both this settlement and future AG-driven litigations on the basis of the same facts would run counter to well-established class action principles and would discourage settlements, which are strongly favored. *Warfarin*, 391 F.3d at 535 (“[T]here is an overriding public interest in settling class action litigation, and it should therefore be encouraged.”).

See Exhibit A, Slip Op. at 12 n.2 (emphasis added).

Dated: November 27, 2012

Respectfully submitted,

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s/Dennis M. Campbell

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of November, 2012, I electronically filed Chase's Notice of Supplemental Authority using the ECF system, which will send a notification of such filing to the counsel of record who have entered appearances in this action. In addition, I served a true and correct copy of Chase's Notice of Supplemental Authority via e-mail on the following individuals:

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