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March 11, 2010

BY HAND DELIVERY

The Hon. William H. Pauley
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: *Ross, et al. v. Bank of America, N.A. (USA), et al.*, No. 1:05-cv-07116 (WHP)

Dear Judge Pauley:

I represent JPMorgan Chase & Co. and Chase Bank USA, N.A. (collectively, "Chase") in the above-referenced matter. I write in response to the letter of March 5, 2010 from Krishnan S. Chittur and Seth Lesser, counsel to Jo Anna Pillitteri, objecting to the Stipulation and Agreement of Settlement With JPMorgan Chase & Co. and Chase Bank USA, N.A. ("Settlement").

I understand that counsel for Ms. Pillitteri and counsel for Chase in the *Pillitteri* matter are working toward reaching an agreement under which Ms. Pillitteri will withdraw her objection to the Settlement. As of this writing, however, that agreement has not been finalized. Thus, out of an abundance of caution, I write to respond to Ms. Pillitteri's objections to the Settlement. Ms. Pillitteri's objections reflect a misunderstanding of the Settlement in several respects.

First, contrary to her counsel's assertions, the Settlement does not "deprive" Ms. Pillitteri or her proposed class of their claims. The claims that she asserts relate to the substantive terms of her account, not to Chase's arbitration clause or class action waiver clause. Accordingly, Ms. Pillitteri's claims are not released by the Settlement.

Second, approval of the Settlement will not affect Ms. Pillitteri's attempt to obtain certification of a class in arbitration. Under the Settlement, Chase reserves the right to assert its class action waiver clause as a defense to class arbitration proceedings in the pending matter in which Ms. Pillitteri seeks class arbitration. The class action waiver clause likewise will be a

defense to class arbitration in that matter if approval of the Settlement is denied. Ms. Pillitteri will have to overcome this obstacle to class arbitration *regardless* of whether the Settlement is approved.

Third, Chase's reservation of its right to resist class arbitration in the *Pillitteri* matter is fair, reasonable, and consistent with the original intent of the Settlement. As part of a settlement of this case, Chase is willing to forego assertion of its class action waiver or arbitration clauses against proposed class actions filed in *court*. It is not willing to forego reliance on those clauses as a defense to class *arbitration*. Chase's cardholders never consented to class arbitration proceedings in their cardholder agreements. Accordingly, if Chase were to give up a defense to class arbitration proceedings as part of the *Ross* settlement, it would expose its cardholders to a procedure that they likely did not expect. As a result, Chase could be confronted with a form of double jeopardy. If Chase "loses" in class arbitration, the results arguably would be binding on Chase. But if Chase "wins" a class arbitration, its cardholders might refuse to abide by the results of the arbitration on the ground that they did not consent to such a procedure in their cardholder agreements.

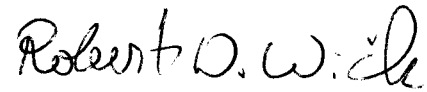
For these reasons, Chase made clear during the settlement negotiations that it did not intend to submit to class arbitration as the price of settling this case. The initial Memorandum of Settlement signed on November 20, 2009 therefore contains a clause that explicitly reserves Chase's right to resist class arbitration in *Caban v. J.P. Morgan Chase & Co.*, No. 12200 (11th Cir.). At the time the Memorandum was signed, the attorneys who reviewed the Memorandum were not aware of any other case in which class arbitration was an issue. Between the execution of the Memorandum and the execution of the Settlement, however, it became clear that class arbitration would not be an issue in *Caban* but might be an issue in *Pillitteri* and another case called *Puleo*. Thus, consistent with the original understanding that the Settlement would not impede Chase's right to resist class arbitration, the final Settlement substitutes *Puleo* and *Pillitteri* for *Caban* in the carveout provision. *See* Settlement § 3(b)(ii); Memorandum ¶ 2 (final sentence).

The explicit carveouts for *Caban*, *Pillitteri*, and *Puleo* arguably were redundant and unnecessary. The Settlement was never intended to foreclose Chase from resisting class arbitration in pending proceedings. Fairly read, neither the final Settlement nor the initial Memorandum would do so even if there were no explicit carveouts. *See* Settlement § 3(c)(iii); Memorandum ¶ 2. The carveouts were merely included out of an abundance of caution and for the avoidance of ambiguity.

Finally, even if Ms. Pillitteri had raised a genuine issue as to whether *final* approval should be given to the Settlement—and she has not—she falls far short of establishing a basis for denying *preliminary* approval. A settlement should be given preliminary approval if it "fits within the range of possible approval." *In re Warner Chilcott Ltd. Sec. Litig.*, No. 06 Civ. 11515, 2008 WL 5110904, at *2 (S.D.N.Y. Nov. 20, 2008) (Pauley, J.) (quoting *In re Prudential Secs. Inc. Ltd. P'ships Litig.*, 163 F.R.D. 200, 210 (S.D.N.Y. 2005)). The Settlement is plainly within that range.

For these reasons, Chase respectfully asks this Court to overrule the objections raised by Ms. Pillitteri.

Sincerely,

A handwritten signature in black ink that reads "Robert D. Wick". The signature is written in a cursive style with a large, looped initial "R".

Robert D. Wick

cc: Counsel for All Parties
Krishnan S. Chittur, Esq.
Seth Lesser, Esq.