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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14 MARY JANE YAKAS, on Behalf of Herself)
15 and All Others Similarly Situated,)
16 Plaintiff,)

17 vs.)

18 CHASE MANHATTAN BANK USA, N.A.,)
Predecessors, Successors, and Subsidiaries, and)
19 DOES 1-100, Names and Addresses Currently)
Unknown,)
20 Defendants.)
21

No. 09-cv-02964-WHA
CLASS ACTION
PLAINTIFF'S MOTION FOR CLASS
CERTIFICATION
DATE: April 29, 2010
TIME: 8:00 a.m.
COURTROOM: 9
HONORABLE WILLIAM H. ALSUP

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1 Plaintiff, on behalf of herself and all others similarly situated, submits this memorandum in
2 support of her motion for class certification against defendant Chase Manhattan Bank USA, N.A.,
3 (“Chase” or “Defendant”). Plaintiff proposes certification of the following class:

4 All Chase customers (including customers of their predecessors and/or successors) in
5 the United States, whose home equity line of credit accounts were suspended based
6 upon an estimated decline in property value – determined by an automated valuation
7 model (“AVM”) – without an appraisal of the property (the “Class”).

8 **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

9 This class action arises out of Defendant’s unilateral termination of its customers’ contractual
10 right to draw on their Home Equity Lines of Credit (“HELOC”). HELOCs provide homeowners
11 with a revolving line of credit, secured with a mortgage on their home. Class Members, like the
12 plaintiff here, obtained their HELOC by securing an appraisal of their home to determine its
13 appraised value. Based upon the amount of equity in the home, Chase calculated the size of the
14 HELOC it would provide. With respect to plaintiff Yakas, Chase applied a 90% loan to value ratio,
15 and granted Yakas a \$71,750 line of credit. Chase Bank USA, N.A.’s Motion to Dismiss Plaintiff’s
16 First Amended Complaint, ¶11 [Dkt. No. 41].

17 The rights and obligations of Chase and the Class Members are set forth in a form contract of
18 adhesion that was drafted by Chase. Each of the Class Members was required to, and did, execute
19 the form HELOC contract in order to obtain their line of credit. By virtue of a choice of law
20 provision, Delaware law governs plaintiff’s and the Class Members’ claims.

21 The HELOC contract provided the Class Members the contractual right to draw on a credit
22 account at their own direction and discretion. For each one year “Draw Period” the contract required
23 the Class Members to pay Chase an “Annual Participation Fee” (“Annual Fee”) of twenty dollars as
24 consideration of their right to draw funds on their HELOC account. When a draw was made, the
25 contract required the Class Members to pay interest on the outstanding balance to compensate Chase
26 for lending the funds. The HELOC contract provides Chase the contractual right to terminate the
27 Class Members’ right to draw on the HELOC if the value of the property declined “significantly
28 below” its original appraised value for purposes of the HELOC account – *i.e.* if the loan to value
ratio was adversely affected.

1 In 2008, with the economic downturn, Chase unilaterally eliminated plaintiff's and the Class
2 Members' right to draw upon their HELOC accounts. However, it did so without appraising the
3 Class Members' homes such that Chase was unable to determine if the appraised value had declined
4 at all, let alone "significantly declined." Rather, Chase "estimated" the value of the Class Members'
5 homes using an "automated valuation model" ("AVM") – a computer program suggesting that home
6 values were falling in many parts of the country. However, nothing in the form HELOC contract
7 permits the use of such a computer estimate to determine the appraised value of the Class Members'
8 homes. Accordingly, Chase's termination of the Class Members' right to draw on their equity lines
9 based upon this internal "estimate" breached the HELOC contract.

10 Although Chase had terminated the Class Members' rights to draw against their HELOC
11 accounts it did not refund the balance of the Annual Fee pertaining to the remaining portion of the
12 terminated Draw Period. To add insult to injury, Chase continued (and continues to this day) to
13 charge the Class Members the Annual Fee for Draw Periods that no longer exist as a result of the
14 2008 suspension of its customers' HELOC accounts.

15 Common legal questions predominate: does the HELOC contract permit Chase to estimate
16 appraised value using an AVM rather than securing an appraisal as provided in paragraph 10 of the
17 HELOC contract? If use of an AVM is permitted, common factual issues similarly predominate:
18 does the AVM accurately estimate the appraised value? Finally, the claims of the proposed Class
19 Representative are typical of those of the Class Members she seeks to represent: she executed the
20 form contract of adhesion and her HELOC was suspended as a result of Chase's use of the AVM to
21 estimate the value of her home.

22 At bottom, this case is a prototypical class action. Each Class Member was subjected to
23 identical business practices: (1) a form contract of adhesion governs Defendant's and the Class
24 Members' rights and obligation; (2) a uniform computer model was used by Chase to rescind the
25 Class Members' rights to draw on their HELOC account; and (3) a form letter was sent to the Class
26 Members informing them that they could no longer draw upon their HELOC accounts.

27

28

1 **II. STATEMENT OF FACTS**

2 **A. The Uniform Agreement Between Chase and the Proposed Class**

3 Plaintiff and the unnamed Class Members obtained a HELOC from Chase. FAC ¶10.¹ The
4 rights and obligations of Chase and the Class Members pertaining to their HELOC are governed by a
5 form contract of adhesion that was drafted by Chase. *Id.* Only one version of the form HELOC
6 contract – the version executed by the proposed Class Representative – has been produced and/or
7 identified by Chase in its initial disclosures. *See* Exhibit A to the Declaration of Frank J. Janecek, Jr.
8 in Support of Plaintiff’s Motion for Class Certification (“Janecek Decl.”), filed herewith.²

9 Paragraph 14 of the form contract obligates the borrower “to pay to [Chase] a non-refundable
10 Annual Participation Fee of \$20.00 *during the Draw Period* and any extension of the *Draw Period*.”
11 Janecek Decl., Ex. A, ¶14 (emphasis added). If the Class Members draw funds during the Draw
12 Period, they are obligated to pay interest on the funds advanced until they are repaid. *Id.*, ¶7
13 (“Finance charges begin to accrue on the day an Advance is charged to your Credit Account and
14 continue until the outstanding balance on such Advance is paid in full.”).

15 Paragraph 16 of the form contract permits Chase to “refuse to make additional extensions of
16 credit, or reduce [the Class Members’] Credit Limit if [t]he value of the Property [securing the line]
17 declines significantly below its original appraised value for the purposes of this Credit Account.”
18 *Id.*, ¶16. The method for determining the value of the property during the life of the Agreement is an
19 appraisal. Indeed, paragraph 10 of the contract expressly states: “*Any time as we may reasonably*
20 *require*, while you have the right to take Advances on your Credit Account, *we may obtain an*
21 _____

22 ¹ All paragraph (“FAC ¶”) references are to Plaintiff’s First Amended Complaint for: (1)
Breach of Contract; and (2) Unjust Enrichment [Dkt. No. 40].

23 ² On October 30, 2009, the parties exchanged their Rule 26(a)(1) disclosures. In conjunction
24 with their initial disclosure, Defendant produced 346 pages of documents they assert to be relevant
25 to the issues. Those documents identified a single version of the form HELOC contract – the version
26 executed by plaintiff. Janecek Decl., Ex. A (CHASE-00031-CHASE-00039). On February 16,
27 2010, Chase served a Supplemental Rule 26(a)(1) disclosure. In conjunction with their supplemental
28 disclosure, Defendant produced no additional documents, and identified no other versions of the
form contract. Without identifying even a single different version, Defendant stated that they “may
use” “[o]ther Chase contracts that are different than the Yakas HELOC contract.” Janecek Decl., Ex.
B, ¶2.h.

1 *appraisal on the Property*. You agree that you will cooperate with us in obtaining such an
 2 appraisal.” (Emphasis added). Nowhere in the HELOC Agreement is there any provision permitting
 3 the use of any valuation method other than the appraisal of the property for determining property
 4 value. *See generally* Janecek Decl., Ex. A.

5 **B. The Uniform Conduct of Suspending Accounts Based on a Secret**
 6 **Computer Estimate**

7 In 2008, due to the economic downturn, Chase wanted to eliminate HELOC liabilities from
 8 its books. FAC ¶16. However, rather than securing appraisals of the Class Members’ properties in
 9 compliance with paragraph 10 of its HELOC contract, Chase used a secret computer model to
 10 “estimate” property values.³ FAC ¶14. Via form letter, Chase thereafter informed plaintiff and the
 11 Class Members that Chase was “suspending future draws against [their] account as of [specified
 12 date].” Janecek Decl., Ex. C at 1.⁴ This form letter stated that cancellations were occurring because
 13 home values were falling in many parts of the country, and through an unidentified internal valuation
 14 method, Chase estimated that the property’s value “no longer supports the full amount of your Line
 15 of Credit, so we are suspending future draws against your account.” *Id.*

16 **C. The Uniform Practice of Charging the Annual Fee for the Draw**
 17 **Periods that Chase Unilaterally Terminated**

18 Paragraph 14 of the form contract provides that Chase may collect an Annual Fee during
 19 each “Draw Period” and for each extension of the “Draw Period,” for each year on the anniversary
 20 of the Agreement. Janecek Decl., Ex. A, ¶14. The 2008-09 Draw Period ended when Chase mailed
 21 the form letter informing plaintiff and the Class Members that it was suspending their rights to draw
 22 upon their HELOC accounts. FAC ¶19. Despite terminating the 2008-09 Draw Period, Chase did
 23 not refund the pro rata portion of the Annual Fee for the remaining portion of that Draw Period.

24 _____
 25 ³ The form letter sent to Plaintiff and the Class Members confirms that no appraisals were
 26 obtained: “We used an industry standard method to value your property that did not require an
 appraiser to enter your home.” Janecek Decl., Ex. C at 2.

27 ⁴ Defendants have not identified any other version of the form termination letter than the one
 28 mailed to the proposed Class Representative. Janecek Decl., Ex. C (YAKAS 0134-0135).

1 Declaration of Mary Jane Yakas in Support of Plaintiff’s Motion for Class Certification (“Yakas
2 Decl.”), ¶5, filed herewith. And, Chase charged plaintiff and the unnamed Class Members an
3 Annual Fee for the 2009-10 Draw Period it had terminated the year before. FAC ¶20.

4 **D. Delaware Law Governs Plaintiff’s and the Class Members’ Claims**

5 The form contract includes a Delaware choice of law provision. Janecek Decl., Ex. A, ¶26.⁵
6 Accordingly, the claims of plaintiff and the unnamed Class Members are governed by Delaware law.

7 **III. THIS CASE SATISFIES THE REQUIREMENTS OF RULE 23**

8 “[A] company which wrongfully exacts a dollar from each of millions of customers will
9 reap a handsome profit’ ‘the class action is often the only effective way to halt and redress such
10 exploitation.’” *Kaltwasser v. Cingular Wireless LLC*, 543 F. Supp. 2d 1124, 1129 (N.D. Cal. 2008)
11 (citing *Discover Bank v. Superior Court of Los Angeles*, 36 Cal. 4th 148, 161 (2005) (quoting *Linder*
12 *v. Thrifty Oil Co.*, 23 Cal. 4th 429, 446 (2000))). The United States Supreme Court has recognized
13 the importance of class actions:

14 The aggregation of individual claims in the context of a classwide suit is an
15 evolutionary response to the existence of injuries unremedied by the regulatory
16 action of government. Where it is not economically feasible to obtain relief within
17 the traditional framework of a multiplicity of small individual suits for damages,
18 aggrieved persons may be without any effective redress unless they may employ the
19 class-action device.

20 *Deposit Guaranty Nat’l Bank v. Roper*, 445 U.S. 326, 339, 100 S. Ct. 1166, 63 L. Ed. 2d 427 (1980).

21 In consumer protection cases a class action is more efficient than individual actions. *Gonzales v.*

22 ⁵ The elements of a Breach of Contract claim under Delaware and California law are identical.
23 **Compare** *Somera v. Indymac Fed. Bank, FSB*, No. 09-cv-1947-FCD, 2010 U.S. Dist. LEXIS 19256,
24 at *21 (E.D. Cal. Mar. 2, 2010) (“In California ‘[a] cause of action for breach of contract requires
25 proof of the following elements: (1) existence of the contract; (2) plaintiff’s performance or excuse
26 for nonperformance; (3) defendant’s breach; and (4) damages to plaintiff as a result of the breach.’”)
27 **with** *Polak v. Kobayashi*, No. 05-cv-330-SLR, 2008 U.S. Dist. LEXIS 92254, at *29 (D. Del. Nov.
28 13, 2008) (“Under Delaware law, the elements of a breach of contract claim are: (a) a contractual
obligation; (b) breach of that obligation by the defendant; and (c) resulting damage to plaintiff.”).
Similarly, under both Delaware and California law, ambiguity in a contract of adhesion is construed
against the drafter. *See Douty v. Nationwide Mut. Ins. Co.*, No. 85-27-CMW, 1987 U.S. Dist.
LEXIS 4921, at *6 (D. Del. June 4, 1987); *see also Yang v. Home Loan Funding, Inc.*, No. 07-1454
AWI-GSA, 2010 U.S. Dist. LEXIS 21837, at *33 (E.D. Cal. Feb 18, 2010) (“‘[A] contract of
adhesion is fully enforceable according to its terms,’ except that [t]he rule requiring the resolution of
ambiguities against the drafting party ‘applies with peculiar force in the case of a contract of
adhesion.’””).

1 *Arrow Fin. Servs. LLC*, 233 F.R.D. 577, 582 (S.D. Cal. 2006). Any doubts as to the propriety of
 2 class certification must be resolved in favor of certification. *Gonzales v. Arrow Fin. Servs. LLC*, 489
 3 F. Supp. 2d 1140, 1154 (S.D. Cal. 2007); 2 Herbert B. Newberg, *et al.*, *Newberg on Class Actions*
 4 §§7.17-7.22 (3d ed. 1992).

5 In determining whether Rule 23 is satisfied, the Court must accept the truth of the
 6 complaint's allegations and need not conduct a merit-based inquiry. *McPhail v. First Command Fin.*
 7 *Planning, Inc.*, 247 F.R.D. 598, 608 (S.D. Cal. 2007) (citing *Blackie v. Barrack*, 524 F.2d 891, 901
 8 n.17 (9th Cir. 1975)). Because the class certification inquiry is whether or not an overriding question
 9 of law or fact common to the entire class exists, the outcome of the determination on "the merits of
 10 the claims is [generally] inappropriate." 7A Charles Alan Wright, Arthur R. Miller & Mary Kay
 11 Kane, *Federal Practice and Procedure: Civil 2d* §1759 (2006); *see also Eisen v. Carlisle &*
 12 *Jacquelin*, 417 U.S. 156, 177-78, 94 S. Ct. 2140, 40 L. Ed. 2d 732 (1974); *Valentino v. Carter-*
 13 *Wallace, Inc.*, 97 F.3d 1227, 1233 (9th Cir. 1996).

14 Rule 23(a) enumerates four prerequisites for class certification, referred to as: (1) numerosity;
 15 (2) commonality; (3) typicality; and (4) adequacy. Each of these requirements is met here.

16 **A. Numerosity**

17 Rule 23(a) requires the class to be so numerous that joinder of individual class members is
 18 impracticable. At this stage of litigation plaintiff does not know the *exact* size of the proposed Class,
 19 but based on the size of Defendant's lending practices it unquestionably numbers in the tens of
 20 thousands. Janecek Decl, ¶4 (explaining that Countrywide Bank suspended 122,000 HELOC as of
 21 April 21, 2008, and Chase is orders of magnitude larger than Countrywide). Where "the exact size
 22 of the class is unknown, but general knowledge and common sense indicate that it is large, the
 23 numerosity requirement is satisfied." 1 William B. Rubenstein, Alba Conte & Herbert B. Newberg,
 24 *Newberg on Class Actions* §3.3 (4th ed. 2002).

25 At bottom, as the Class numbers in the tens of thousands, the numerosity requirement is
 26 readily satisfied. *See Lowedermilk v. U.S. Bank Nat'l Ass'n*, 479 F.3d 994, 997 (9th Cir. 2007)
 27 (numerosity satisfied where there was potentially thousands of eligible class members); *see also Gay*
 28 *v. Waiters' & Dairy Lunchmen's Union*, 549 F.2d 1330, 1332-34 (9th Cir. 1977) (finding that 184

1 potential class members satisfies numerosity); *see also Sullivan v. Chase Inv. Servs., Inc.*, 79 F.R.D.
2 246, 257 (N.D. Cal. 1978) (finding a class of one thousand members “clearly satisfies the numerosity
3 requirement”).

4 **B. Commonality**

5 Rule 23(a)(2) commonality is a minimal requirement that may be met by a single issue of law
6 or fact. *Sandoval v. Tharaldson Emple. Mgmt.*, No. 08-EDCV 08-00482 VAP, 2009 U.S. Dist.
7 LEXIS 111320, at *7 (C.D. Cal. Nov. 17, 2009); *In re First Alliance Mortg. Co.*, 471 F.3d 977, 990-
8 91 (9th Cir. 2006). “The existence of shared legal issues with divergent factual predicates is
9 sufficient, as is a common core of salient facts coupled with disparate legal remedies within the
10 class.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). ““When common questions
11 present a significant aspect of the case and they can be resolved for all members of the class in a
12 single adjudication, there is clear justification for handling the dispute on a representative rather than
13 an individual basis.”” *In re: Static Random Access Memory (“S.R.A.M.”) Antitrust Litig.*, No. C 07-
14 01819 CW, 2009 U.S. Dist. LEXIS 110407, at *45-*46 (N.D. Cal. Nov. 29, 2009) (quoting *Hanlon*,
15 150 F. 3d at 1022).

16 Here, commonality is easily satisfied as both common legal and common factual issues exist.
17 The core legal issue confronted by plaintiff and each and every Class Member is whether the form
18 contract of adhesion Chase drafted permits it to estimate property value with a computer model for
19 purposes of invoking paragraph 16 of the contract to suspend their contractual right to make draws
20 on their HELOC accounts. Because the rights and obligations of Chase *vis-a-vis* each of the Class
21 Members are defined by the same form contract of adhesion, a resolution of the contract
22 interpretation analysis with respect to plaintiff Yakas will equally apply to each of the unnamed
23 Class Members.

24 In the unlikely event that the Court determines that the contract authorizes use of such
25 undisclosed model a common factual issue arises. Assuming *arguendo* that use of an AVM is
26 permitted – which it is not – the question becomes whether Chase’s secret computer model *reliably*
27 *estimates* appraised value. And, we know – based upon the “estimate” relating to the plaintiff’s
28 home – that the AVM is woefully inaccurate.

1 Indeed, at the time of suspension, the County of Contra Costa assessed plaintiff's property
2 value for tax purposes at \$705,000, while Chase's computer estimated the value to be \$674,000.
3 **Compare** Janecek Decl., Ex. D, with *id.*, Ex. C. At a bare minimum, the AVM does not consider
4 improvements to the property, tax valuations, and/or the extent to which debt secured by the property
5 has been paid down (or even paid off entirely). FAC ¶5. To be sure, when pressed by the Court at
6 the hearing on Defendant's motion to dismiss, Chase's counsel did not know if the AVM considered
7 such information as the number of rooms or even the square footage of the home. January 21, 2010
8 Court Transcript at 13:14-14:1.⁶ Janecek Decl., Ex. E.

9 In short, commonality exists here because plaintiff and the Class Members were subject to a
10 common course of conduct by Chase. They executed the same form HELOC contract, their
11 HELOCs were suspended based upon estimates obtained from the same flawed AVM, they were
12 notified of the suspension by the same form letter, and they were each charged an Annual Fee for
13 Draw Periods that Chase had terminated.

14 **C. Typicality**

15 Typicality under Rule 23(a)(3) is satisfied where the plaintiff's claims are "reasonably co-
16 extensive" with absent class members' claims, even if the claims are not "substantially identical."
17 *Hanlon*, 150 F.3d at 1020; *Sanbrook v. Office Depot, Inc.*, No. 07-C-5938 RMW, 2009 U.S. Dist.
18 LEXIS 20857 (N.D. Cal. Mar. 30, 2009). Typicality is satisfied where the class was injured through
19 an alleged common practice. *Hanlon*, 150 F.3d at 1020; *California Rural Legal Assistance, Inc. v.*
20 *Legal Servs. Corp.*, 917 F.2d 1171, 1175 (9th Cir. 1990). Under the "common course of conduct"
21 test applied by the Ninth Circuit, class certification is appropriate where consumers are "allegedly
22 defrauded over a period of time by similar misrepresentations." *McPhail*, 247 F.R.D. at 609
23 (quoting *Blackie*, 524 F.2d at 902). In fact, almost by definition, common issues predominate
24

25
26 ⁶ Plaintiff has served a deposition subpoena on the company who conducted Chase's AVM to
27 ascertain what is and is not considered by the AVM in making its estimate. At the deposition,
28 plaintiff will undoubtedly discover additional inaccuracies in the secret AVM upon which Chase
relied.

1 consumer protection actions. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625, 117 S. Ct. 2231,
2 138 L. Ed. 2d 689 (1997).

3 Typicality is met here as the claims of the plaintiff are precisely the same as those of the
4 unnamed Class Members. Like each of the Class Members, plaintiff's and Chase's rights and
5 obligations are governed by the form HELOC contract, which itself is governed by Delaware law.
6 Like the unnamed Class Members, plaintiff had no bargaining power to alter any of the provisions of
7 the form HELOC contract that Chase drafted. *Yakas Decl.*, ¶4. Chase used the same flawed
8 computer model to estimate her and the Class Members' home values. And, plaintiff received the
9 same form letter that the Class Members received, informing them that Chase was suspending their
10 HELOC because home values were falling in many parts of the country.

11 In short, "[t]he same... strategy and scheme that injured the named plaintiffs likewise injured
12 the absent class members." *McPhail*, 247 F.R.D. at 610.

13 **D. Adequacy of Representation**

14 For adequacy, the issue is whether "the named plaintiffs and their counsel have any conflicts
15 of interest with other class members," and whether "the named plaintiffs and their counsel [will]
16 prosecute the action vigorously on behalf of the class." *Hanlon*, 150 F.3d at 1020. As discussed
17 above, with respect to typicality and commonality, the interests of the plaintiff and the proposed
18 Class are fully aligned. Adequacy is surely met here because there are no "antagonistic or
19 conflicting" interests between the plaintiff and the Class. *See McPhail*, 247 F.R.D. at 611. And,
20 plaintiff *Yakas* is committed to fulfilling her role as the class representative. *Yakas Decl.*, ¶8.

21 Adequacy is also plainly met with plaintiff's counsel. The resumes and biographies of
22 Coughlin Stoia Geller Rudman & Robbins, LLP and Landskroner, Greico, Madden, LLC (Exs. F
23 and G) reflect their substantial experience and success in prosecuting large, complex class actions
24 similar to the instant case. There is no question that plaintiff and her counsel will capably represent
25 the Class here.

26 **IV. RULE 23(B) IS SATISFIED**

27 Under Rule 23(b), certification is appropriate if (i) questions of law or fact common to the
28 members of the class predominate over any questions affecting only individual members and (ii) the

1 class action is superior to other available methods for the fair and efficient adjudication of the
2 controversy. *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244
3 F.3d 1152, 1162-63 (9th Cir. 2001). As plaintiff satisfies both elements, class certification is
4 warranted.

5 **A. Common Issues of Law and Fact Predominate Over Individual Issues**

6 Rule 23(b)(3) focuses on the relationship between the common and individual issues.
7 *Hanlon*, 150 F.3d at 1022. “When common questions present a significant aspect of the case and
8 they can be resolved for all members of the class in a single adjudication, there is clear justification
9 for handling the dispute on a representative rather than on an individual basis” *Id.* (citation
10 omitted); *see also Helm v. Alderwoods Group, Inc.*, No. C-08-01184 SI, 2009 U.S. Dist. LEXIS
11 123527 (N.D. Cal. Dec. 29, 2009). Moreover, “[t]he mere presence of potential individual issues
12 does not defeat the predominance of common questions.” *Westways World Travel Inc. v. AMR*
13 *Corp.*, 218 F.R.D. 223, 239 (C.D. Cal. 2003) (citation omitted).

14 Here, because the rights and obligations of Chase and the Class Members are governed by
15 the same form contracts, and as Chase used the same computer model to estimate property values,
16 common issues predominate. Indeed, as more than one Court has determined: “When viewed in
17 light of Rule 23, *claims arising from interpretations of a form contract appear to present the*
18 *classic case for treatment as a class action, and breach of contract cases are routinely certified as*
19 *such.*” *Menagerie Prods. v. Citysearch*, No. CV-08-4263 CAS(FMO), 2009 U.S. Dist. LEXIS
20 108768, at *36 (C.D. Cal. Nov. 9, 2009) (emphasis added, citation omitted); *see also Heartland*
21 *Commc’ns Inc. v. Sprint Corp.*, 161 F.R.D 111 (D. Kan. 1995) (certifying a class where contracts
22 signed by all class members contained virtually the same provisions as that challenged by the class
23 representatives); *Steinberg v. Nationwide Mut. Ins. Co.*, 224 F.R.D. 67, 74 (E.D.N.Y. 2004) (“claims
24 arising from interpretations of a form contract appear to present the classic case for treatment as a
25 class action”); *Sparano v. Southland Corp.*, No. 94-C-2098, 1996 U.S. Dist. LEXIS 17485, at *6
26 (N.D. Ill. Nov. 21, 1996) (“Generally, claims arising out of form contracts are particularly
27 appropriate for class action treatment.”).

28

1 At bottom, because the Class Members were bilked in the same manner, the common issues
2 of law and fact are core issues in this case, and in any individual action. When these questions are
3 answered as to plaintiff, they will be answered for each of the Class Members.

4 **B. A Class Action Is Superior to Other Available Methods of**
5 **Adjudicating the Issues Raised**

6 Superiority is demonstrated where “class-wide litigation of common issues will reduce
7 litigation costs and promote greater efficiency.” *Negrete v. Allianz Life Ins. Co. of North Am.*, 238
8 F.R.D. 482, 493 (C.D. Cal. 2006) (citing *Valentino*, 97 F.3d at 1234). Rule 23(b)(3) sets forth the
9 relevant factors for determining whether “a class action is superior to other available methods for
10 fairly and efficiently adjudicating the controversy” Fed. R. Civ. P. 23(b)(3). “[C]onsideration of
11 these factors requires the court to focus on the efficiency and economy elements of the class action
12 so that cases allowed under subdivision (b)(3) are those that can be adjudicated most profitably on a
13 representative basis.” *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1190 (9th Cir. 2001)
14 (citation omitted).

15 The Rule 23(b)(3) “superiority” factors support class certification here. First, the Class
16 Members in this case have little incentive to litigate their claims on an individual basis because the
17 out-of-pocket expense and personal commitment necessary to litigate each claim will outweigh any
18 potential recovery. *See Negrete*, 238 F.R.D. at 495; *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797,
19 809, 105 S. Ct. 2965, 86 L. Ed. 2d 628 (1985) (“Class actions . . . may permit the plaintiffs to pool
20 claims which would be uneconomical to litigate individually.”). Classwide treatment of the claims
21 of the proposed Class, potentially consisting of tens of thousands of Chase customers, is not only
22 much more efficient, it is the only realistic way for these customers to proceed. As Judge Wilken
23 recently observed when she certified a proposed 27-state class: “What would be unmanageable is
24 the institution of countless individual lawsuits with the same facts and legal issues.” *In re: SRAM*,
25 2009 U.S. Dist. LEXIS 110407, at *60.

26 Second, “the extent and nature of any litigation concerning the controversy already begun by
27 or against class members” (Fed. R. Civ. P. 23(b)(3)(B)) supports certification. While additional
28 class actions have been filed against Chase for similar practices related to HELOC suspension,

1 plaintiff's counsel is unaware of even a single action having been filed by an individual Class
2 Member, seeking only individual relief. Why would they as the filing fee alone would undoubtedly
3 exceed the damages sought. Janecek Decl., ¶8.

4 Third, the Court may consider the desirability of concentrating the claims in this forum. Fed.
5 R. Civ. P. 23(b)(3)(C). This factor's "emphasis is on the forum selected, not the concentration of
6 claims." 2 *Newberg on Class Actions* §4.31, at 4-123. This District is a compelling forum for
7 litigating this putative class action because Chase contracted with thousands of customers in
8 California and the proposed Class Representative resides here. Class treatment in the present forum
9 represents an efficient and reasonable use of judicial resources.

10 Finally, Courts should consider "the likely difficulties in managing a class action" Fed. R.
11 Civ. P. 23(b)(3)(D). Here, no significant manageability issues exist. As described above the issue of
12 breach turns on the interpretation of a form contract that all Class Members signed, and the same
13 flawed computer model was used with every Class Member as Chase's justification for suspending
14 the HELOC accounts. And, because each of the Class Members' claims are governed by Delaware
15 law, certification of a nationwide class presents no manageability problems. *See, e.g., Hall v. Sprint*
16 *Spectrum L.P.*, 876 N.E. 2d 1036, 1040-41 (Ill. 2007) (affirming certification of 48-state class
17 because "the class certification was predicated upon the application of Kansas law based on the
18 choice-of-law provision contained in Sprint's form contract"). As the *Hall* court explained in
19 rejecting the defendant's argument that the laws of all 48 states must be applied to the absent class
20 members' claims, the court explained: "The fact that Kansas law might not otherwise apply is
21 irrelevant because the parties expressly agreed that Kansas law would apply." *Id.* at 1042.

22 Undoubtedly, applying a single state's law presents no manageability issues. To be sure, in
23 rejecting the defendants assertion that application of different state laws in a proposed 27-state class
24 made the action unmanageable, Judge Wilken explained:

25 [T]here is no qualitative difference between a federal district court considering class
26 certification of state claims under that state law and a federal court serving as a
27 multi-district litigation forum performing the same task for many federal courts.
Moreover, courts frequently certify classes under the laws of multiple jurisdictions.

28 *In re: SRAM*, 2009 U.S. Dist. LEXIS 110407, at *61.

1 At bottom, maintenance of this suit as a class action is a fair and efficient method to
2 adjudicate the claims of all Class Members without burdening the judiciary with a multiplicity of
3 duplicative lawsuits. *Negrete*, 238 F.R.D. at 493-94. There simply are no individual issues that
4 would make this class action unmanageable.

5 **V. CONCLUSION**

6 For all of the foregoing reasons, plaintiff respectfully requests that her motion for class
7 certification be granted.

8 DATED: March 25, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on March 25, 2010.

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