

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK**

<p>RACHEL CYMBALISTA and ARIEL CYMBALISTA, on behalf of themselves and all others similarly situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>JPMORGAN CHASE BANK, N.A.,</p> <p style="text-align: center;">Defendant.</p>	<p>Case No. 2:20-CV-00456</p> <p>Hon. Rachel P. Kovner, USDJ Hon Lois Bloom, USMJ</p>
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**DECLARATION OF JOSEPH S. TUSA IN SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT AND
CONDITIONAL CLASS CERTIFICATION OF SETTLEMENT CLASS**

Joseph S. Tusa, an attorney for Plaintiffs, declares as follows:

1. I am a member in good standing of the bar of the United States District Court for the Eastern District of New York and a shareholder in the firm Tusa P.C., co-counsel for Plaintiffs in this lawsuit and proposed Settlement Class Counsel. I respectfully submit this declaration in support of Plaintiffs' *Motion for Preliminary Approval of Proposed Class Action Settlement*, which seeks, among other things, preliminary approval of the *Settlement Agreement and Release* annexed hereto as **Exhibit 1**, approval of the proposed notices and notice program, conditional certification of the Settlement Class,¹ approval of Plaintiffs as representatives for the Settlement Class and appointment of Plaintiffs' counsel (including Tusa P.C.) as Settlement Class Counsel.

2. I have been actively involved in all aspects of the investigation and prosecution of this case and the Parties' settlement negotiations. I am familiar with the factual matters discussed herein and each of these facts is true and correct to the best of my knowledge, information and belief based on the evidence and other materials cited in support.

The Settlement Agreement and Release

¹ All capitalized terms are defined in the accompanying *Settlement Agreement and Release*.

3. Attached hereto as **Exhibit 1** for the Court’s consideration is the *Settlement Agreement and Release* (the “Agreement”), agreed to and executed by the plaintiffs Rachel and Ariel Cymbalista (“Plaintiffs”), defendant JPMorgan Chase Bank, N.A. (“Chase” and collectively with Plaintiffs, the “Parties”) and counsel for the Parties. The Agreement contains the following annexed Exhibits:

- **Exhibit A:** [Proposed] Order Granting Preliminary Approval of Class Settlement and Directing Class Notice;
- **Exhibit B:** [Proposed] Order and Final Judgment Granting Final Approval of Class Settlement;
- **Exhibit C-1:** Short Form Notice (Postcard Version)
- **Exhibit C-2:** Short Form Notice (Mail Version)
- **Exhibit D:** Long Form Notice

**The Settlement was Negotiated at Arms-Length
with the Assistance of an Experienced Mediator**

4. The Parties and their counsel negotiated the classwide settlement set forth in the Agreement (the “Settlement”) at arms-length over several months, with the assistance of JAMS mediator and retired federal magistrate judge Hon. Elizabeth LaPorte.

5. After discovery had commenced and briefing on the Chase’s motion to dismiss was fully-submitted, in September 2020 the Parties commenced discussions concerning a potential classwide settlement of this action. On September 30, 2020, the Parties informed the Court that settlement negotiations were ongoing and requested a temporary stay. Dkt. 40. On October 2, 2020, the Court stayed the case for 45 days and directed the Parties to file a further status report by December 1, 2020. 10/2/20 Elec. Order.

6. On November 12, 2020, the Parties informed the Court that they had agreed to mediation before the Hon. Elizabeth LaPorte (Ret.). Dkt. 43. In advance of the meditation, both sides prepared and submitted meditation statements to Judge LaPorte.

7. In advance of the meditation, Chase supplemented its discovery production by

producing to Plaintiffs' counsel a spreadsheet containing the total escrow balances, by month, of Chase-serviced loans *not* paid interest on escrow balances for the 13 states identified in the Plaintiffs' original complaint for a time period covering the longest relevant statute of limitations in each state. Chase also provided Plaintiffs' counsel the number of loans not paid interest on escrow ("IOE") for same time period in the same 13 states and also provided Plaintiffs' counsel requested information about Chase's IOE policies, servicing software and available historical loan data. Using the litigation and settlement discovery produced by Chase, Plaintiffs' counsel calculated the estimated amount of IOE owed and not paid to borrowers in each of the 13 states being discussed.

8. Judge LaPorte and JAMS hosted an all-day mediation on December 15, 2020 attended by counsel for Plaintiffs and both outside and in-house counsel for Chase. No agreement was reached at the end of the December 15 mediation, although Judge LaPorte was able to bring the Parties substantially closer than their pre-mediation settlement positions.

9. Following the mediation, Chase supplemented its production of loan data and provided Plaintiffs' counsel with an explanation as to how Chase identified and collected the loans and loan data in its productions to Plaintiffs' counsel. Chase subsequently provided Plaintiffs' counsel with the proposed Declaration of David Elsner, a Chase Vice President, Operations Manager II, a person familiar with Chase's loan servicing policies and loan servicing platform. That proposed Declaration confirmed how Chase identified and collected the loan data produced to Plaintiffs' counsel, which Plaintiffs' counsel used to perform its analyses of the IOE owed to the Settlement Class. That Declaration will be finalized, signed and provided to Plaintiffs' counsel.²

² Based on their analysis of Chase's loan data, Plaintiffs' counsel formed the opinion that sufficient damages were not present in 7 of the 13 states (*i.e.* Iowa, Massachusetts, Maine, New Hampshire, Oregon, Utah and Vermont) to warrant the expense of settling the claims in those states on a classwide basis. In most of those states (save California), the IOE rate applicable during the relevant statutes of limitation was either 0% or near 0% for much of the relevant time period. As set forth in the Agreement and accompanying Memorandum of Law, claims borrowers in those 7 states are not being settled by the Parties' Agreement and no releases are being sought for claims that may exist for borrowers in those 7 states. The operative First Amended Class Action Complaint filed in this Action contains the claims being settled in this Action based on that laws in the remaining 6 states (*i.e.*, Connecticut, Maryland, Minnesota, New York, Rhode Island and Wisconsin).

10. On December 22, 2020, the Parties reported to the Court that they participated in the mediation, were continuing to negotiate and requested an extension of the stay until January 31, 2021. Dkt. 44. The Court granted the request to continue the stay. *See* 12/22/20 Elec. Order. By the end of January 2021, the Parties still had not reached agreement, but were continuing negotiations. The stay was extended for another 2 weeks. *See* 2/1/21 Elec. Order.

11. During this time, the Parties received further assistance from Judge LaPorte. After conferring with both Parties, Judge LaPorte made a mediator's proposal to the Parties for the settlement of this action. On February 9, 2021, both Parties accepted Judge LaPorte's proposal. On February 11, 2021, the Parties informed the Court of their agreement in principle. Dkt. 46.

12. The Parties executed a Term Sheet on February 15, 2021. Thereafter and continuing through execution of the Agreement, the Parties negotiated the terms of the Agreement, class action notices and other exhibits to the Agreement. Plaintiffs' counsel solicited bids from two potential settlement administrators and chose KCC Class Action Services LLC, with Chase's consent, as the Administrator.

13. On April 9, 2021, with the agreement of Chase and pursuant to FED. R. CIV. P. 15, Plaintiffs filed the operative *First Amended Class Action Complaint* (the "FAC").

14. Also on April 9, 2021, the Parties completed their settlement negotiations and executed the Agreement.

Tusa P.C. is Experienced and Qualified to be Settlement Class Counsel

15. Tusa P.C. and I possess extensive experience in litigating class action litigation for past twenty-three years in the federal and state courts, since 2010 as the managing attorney of Tusa P.C. The firm resume of Tusa P.C. is annexed hereto as **Exhibit 2**, detailing the experience of the firm and the undersigned in litigating consumer class action litigations.

16. Tusa P.C. or I have been appointed class counsel or settlement class counsel in the following consumer class actions:

- (a). *Gunther v. Capital One, N.A.*, E.D.N.Y. No. 09-cv-2966-ADS-AKT;
- (b). *Cassese v. Washington Mut. Inc.*, E.D.N.Y. No. 05-cv-2724-ADS-ARL;
- (c). *McAnaney v. Astoria Fin. Corp.*, E.D.N.Y. No. 04-cv-1101-JFB-WDW
- (d). *Limpert v. Cambridge Credit Counseling Corp.*, E.D.N.Y. No. 03-cv-5986-TCP-WDW;
- (e). *Zimmermann v. Cambridge Credit Counseling Corp.*, D. Mass. No. 03-cv-30261-MAP;
- (f). *Valle v. Popular Community Bank f/k/a Banco Popular North America* N.Y. Sup. Ct. Index No. 653936/2012;
- (g). *Jones v. Genus Credit Mgt. Corp. f/k/a National Credit Counseling Servs.*, AAA No. 11-181-00295-05.

The Settlement is Fair, Reasonable and Adequate

17. Based on my experience and knowledge about the facts and issues in this case, I believe that the Settlement reached in this litigation represents a fair, reasonable, and adequate result for, and is in the best interests of, the Settlement Class Members.

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18. Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief based on the evidence and other materials cited in support.

Executed on April 9, 2021 in Southold, New York.

/s/ Joseph S. Tusa
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