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EUGENE REEDE STOCKTON  
14

15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA

17 **C 09 0587**

18 EUGENE REEDE STOCKTON, on  
19 behalf of himself and all others  
similarly situated,

20 Plaintiffs,

21 vs.

22 CHASE BANK USA, N.A.,

23 Defendant.  
24  
25  
26  
27  
28

CASE NO.

CLASS ACTION

**COMPLAINT FOR DAMAGES,  
EQUITABLE, DECLARATORY, AND  
INJUNCTIVE RELIEF**

Jury Trial Demanded

FILED

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CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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1 Plaintiff, by and through his attorneys, hereby complains against Chase Manhattan  
2 Bank USA, N.A. ( hereinafter referred to as “Defendant” or “Chase”), on behalf of  
3 himself and the proposed class of similarly-situated persons, upon information and  
4 belief, except as to his own actions, the investigation of counsel, and the facts that are a  
5 matter of public record, as follows:

6  
7 **INTRODUCTION**

8 1. This is a class action on behalf of Plaintiff and all Chase credit card  
9 customers who reside in California and who, between February 5, 2005 and the present  
10 (“Class Period”), received and accepted a balance transfer offer from Chase for a fixed  
11 annual percentage rate (“APR”) for the life of the loan, and who now are required to pay  
12 a \$10 monthly charge on that loan (“Class”).

13  
14 **PARTIES**

15 2. Plaintiff Eugene Reede Stockton is a resident of Marin County, California,  
16 and was a Chase customer who received and accepted a balance transfer offer from  
17 Chase for a low fixed APR during the Class Period.

18 3. Defendant Chase is incorporated and headquartered in Delaware. The  
19 company is a significant participant in the financial services and credit card industry both  
20 in the United States and abroad.

21  
22 **JURISDICTION AND VENUE**

23 4. This Court has subject matter jurisdiction over this action pursuant to 28  
24 U.S.C. § 1332, because the aggregate amount in controversy exceeds \$5,000,000,  
25 exclusive of interest and costs, and is a class action in which the Plaintiff is a citizen of  
26 California, and Defendant is a citizen of Delaware.

27 5. This Court has personal jurisdiction over Defendant because it has  
28 purposefully availed itself of the privilege of conducting business activities within the

1 State of California by marketing, soliciting, offering and extending credit cards to  
2 California consumers, as well as other systematic and continuous business contacts  
3 within the State.

4 6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a) because  
5 Plaintiff resides in the District, and because a substantial part of the events giving rise to  
6 Plaintiff's claims occurred in the District.

7  
8 **SUBSTANTIVE ALLEGATIONS**

9 7. The contractual terms of credit between Chase and its credit card customers  
10 are set forth in a card member agreement ("CMA") that Chase provides to its customers  
11 upon an offer and acceptance of credit. Chase periodically offers its customers special  
12 offers of credit known as balance transfer offers ("BTO") whereby existing balances  
13 with other creditors may be transferred to the customer's account with Chase. Some of  
14 the BTO terms are separately stated in solicitation materials for the BTO, while other  
15 terms are incorporated by reference from the CMA. Accordingly, the contractual terms  
16 relating to the BTO are governed by both the BTO and the CMA.

17 8. During the Class Period, Chase routinely made BTOs to its credit card  
18 customers, often enticing them with offers of low APRs for the life of the loan. Indeed,  
19 Chase routinely offered BTOs at 2.99%, 3.99% and 4.99% for the life of the loans.  
20 These rates were well below the normal purchase rates and generally below current  
21 market rates for unsecured and open-ended consumer credit, making such offers very  
22 attractive to consumers.

23 9. In or around November 2005, Mr. Stockton received a BTO from Chase to  
24 transfer a balance of up to \$24,500 at 3.99% for the life of the loan. Mr. Stockton  
25 accepted the offer and transferred approximately \$22,000 to his Chase account.  
26 According to the terms of the BTO, Mr. Stockton was required to make minimum  
27 monthly payments equivalent to 2% of the balance of his loan. While the CMA specifies  
28 certain additional fees or charges, such as a "Late Fee," "Overlimit Fee," "Return

1 Payment Fee,” “Return Check Fee,” and “Administrative Fees,” neither the BTO nor the  
2 CMA identified or authorized Chase to impose or charge an Account Service Charge.  
3 Since receiving the loan in 2005, Mr. Stockton has made payments in accord with the  
4 terms disclosed in the BTO and CMA.

5 10. In or around November 2008, Chase purportedly sent Mr. Stockton a  
6 change in terms notice (“CIT”) which stated the following:

7 a. We’re sending you this notice to advise you of some new changes to  
8 your credit card account. These changes will take place automatically and will be  
9 effective with your January 2009 statement.

10 b. A new account service charge (“ASC”) of \$10.00 per month will be  
11 applied to your account. The charge will be owed whether or not you use your account.

12 c. The monthly service charge is non-refundable unless you close your  
13 account at which time you must pay your outstanding balance in full.

14 d. Your minimum payment due will increase from 2% to 5% of the  
15 ending balance on your monthly statement. As a result your required monthly minimum  
16 will increase.

17 11. As of December, Mr. Stockton’s closing balance was approximately  
18 \$10,000. His minimum payment was approximately \$200. In January his minimum  
19 payment more than doubled to approximately \$500 and he was assessed a \$10 monthly  
20 ASC.

21 12. Chase stated in its change of terms notice that one of the main reasons for  
22 implementing the changes was due to the current level of the APR loans.

23 13. The BTOs sent to Plaintiff and the Class offered low APRs for the life of  
24 the loan. Charging a \$10 fee effectively modifies the APR agreed upon by parties which  
25 was to remain static for the life of the loan. Unilaterally changing the terms of the loan  
26 and effectively increasing the agreed upon APR is an unfair business practice and in  
27 breach of contract.

1 **CLASS ACTION ALLEGATIONS**

2 14. Plaintiff brings this action as a class action pursuant to Rule 23(a), (b)(2)  
3 and (b)(3) of the Federal Rules of Civil Procedure on behalf of himself and members of a  
4 proposed class of all Chase credit customers who reside in California and who, between  
5 February 5, 2005 and the present, received and accepted a balance transfer offer from  
6 Chase for a fixed annual percentage rate for the life of the loan, and who now are  
7 required to pay a \$10 monthly ASC on that loan.

8 15. The members of the Class are so numerous that joinder of all members is  
9 impracticable. While the exact number of Class members is unknown to Plaintiff at this  
10 time, and can only be ascertained through appropriate discovery, Plaintiff is informed  
11 and believes, and on that basis alleges, that thousands of persons throughout California  
12 are members of the Class. The precise number of Class members and their addresses are  
13 ascertainable from the books and records of Chase. Moreover, should it become  
14 necessary, Class members may be notified of the pendency of this action by published  
15 and/or mailed notice.

16 16. Plaintiff's claims are typical of the claims of the members of the Class as all  
17 members of the Class are similarly affected by Defendant's wrongful conduct in  
18 violation of law that is complained of herein.

19 17. Plaintiff has and will continue to fairly and adequately protect the interests  
20 of the members of the Class and has retained counsel competent and experienced in class  
21 action and consumer litigation. Plaintiff has no interests that are adverse or antagonistic  
22 to those of the Class.

23 18. Common questions of law and fact exist as to all members of the Class and  
24 predominate over any questions affecting solely individual members of the Class.  
25 Among the questions of law and fact common to the Class are:

26 a. whether Defendant's actions, as described herein, are in breach of  
27 contract;



1           22. California's Unfair Competition Law ("UCL") defines unfair business  
2 competition to include any "unlawful, unfair or fraudulent" act or practice, as well as any  
3 "unfair, deceptive, untrue or misleading" advertising. Cal. Bus. & Prof. Code § 17200.

4           23. A business act or practice is "unfair" under the Unfair Competition Law if  
5 the reasons, justifications and motives of the alleged wrongdoer are outweighed by the  
6 gravity of the harm to the alleged victims.

7           24. Chase has and continues to violate the "unfair" prong of the UCL by  
8 suddenly imposing and continuing to charge its credit customers a \$10 monthly ASC on  
9 a loan that was offered and accepted at a fixed APR for the life of the loan with no  
10 additional service charges. Chase's conduct is unfair in many ways including but not  
11 limited to the following:

12           a. The addition of a monthly "service" charge effectively modifies, by  
13 increasing, the APR agreed to by the parties. This is a unilateral change imposed on  
14 Class members by Chase long after the terms of the BTO were offered and accepted;

15           b. Notwithstanding Chase's characterization of the charge, the ASC is  
16 not really a "service" charge because it is owed whether or not the consumer uses his  
17 Chase account.

18           c. Plaintiff and the Class cannot opt out of the \$10 ASC because it is  
19 charged whether or not the account is being used, and the only way to avoid the monthly  
20 service charge is by immediately paying off the account in full;

21           d. The practical impact of Chase's practice is that it has unilaterally  
22 increased the cost of credit on a loan in which the cost (as a percentage) had been  
23 previously agreed upon and fixed. Short of immediately paying off the loan, Chase's  
24 customers are held hostage to terms and conditions which were not part of the bargain  
25 and to which they never acceded. Indeed the low, fixed APR was designed to entice  
26 consumers into transferring existing loans with other creditors to Chase. To modify the  
27 terms of the credit after the money has been transferred is harmful and unfair within the  
28 meaning of the UCL.

1 e. Chase's justification is simply that it no longer liked the bargain it  
2 struck with its customers. The gravity of the harm to members of the Class resulting  
3 from such unfair acts and practices outweighs this and any other conceivable reasons,  
4 justifications and/or motives of Chase for unilaterally changing the terms of credit and  
5 imposing a \$10 monthly charge on BTOs. In addition, California has express and  
6 otherwise well developed legislative policies against fraudulent and unfair conduct.

7 25. By committing the acts and practices alleged above, Chase has engaged, and  
8 continues to be engaged, in unfair business practices within the meaning of California  
9 Business and Professions Code §§ 17200, *et seq.*

10 26. Through its unfair acts and practices, Chase has obtained, and continues to  
11 unfairly obtain, money from Plaintiff and the Class in the form of its \$10 monthly service  
12 charge, as well as interest charged thereon. As such, Plaintiff requests that this Court  
13 cause Chase to restore this money to Plaintiff and all Class members, and to enjoin  
14 Chase from continuing to violate the Unfair Competition Law as discussed herein.  
15 Otherwise, the Class may be irreparably harmed and/or denied an effective and complete  
16 remedy if such an order is not granted.

17  
18 **SECOND CAUSE OF ACTION**

19 **(Unfair Business Practices in Violation of**  
20 **Business & Professions Code §§ 17200, *et seq.*)**

21 27. Plaintiff incorporates by reference and realleges all paragraphs previously  
22 alleged herein. These claims are brought on behalf of Plaintiff and the Class against  
23 Chase.

24 28. A business act or practice is "fraudulent" under the Unfair Competition Law  
25 if it actually deceives or is likely to deceive members of the public.

26 29. Chase's acts and practices as described herein have deceived and/or are  
27 likely to deceive members of the consuming public. Specifically, offering credit at a  
28 specific APR for the life of the loan and then unilaterally changing it under the guise of a



1 service fee is nothing more than a bait and switch, the very kind of practice that the UCL  
2 was designed to stop. The terms of the original BTOs made to Plaintiff and the Class  
3 clearly indicated that the APR was fixed for the life of the loan. These representations  
4 were false, misleading and/or likely to deceive because Chase secretly intended to  
5 impose and charge the additional, yet previously undisclosed monthly ASC.

6 30. As a result of the conduct described above, Chase has been, and will  
7 continue to be, unjustly enriched at the expense of Plaintiff and members of the Class.  
8 Specifically, Chase has been unjustly enriched by the monthly \$10 ASC it now charges  
9 on BTOs, which charge was unilaterally imposed in contravention to the agreements it  
10 made with its customers.

11 31. Through its unfair acts and practices, Chase has improperly obtained, and  
12 continues to improperly obtain money from members of the Class. As such, Plaintiff  
13 requests that this Court cause Chase to restore this money to Plaintiff and all Class  
14 members, and to enjoin Chase from continuing to violate the Unfair Competition Law as  
15 discussed herein. Otherwise, Plaintiff and the Class will be irreparably harmed and/or  
16 denied an effective and complete remedy if such an order is not granted.

17  
18 **THIRD CAUSE OF ACTION**

19 **(Breach of Contract)**

20  
21 32. Plaintiff incorporates by reference and realleges all paragraphs previously  
22 alleged herein. These claims are brought on behalf of Plaintiff and the Class against the  
23 Defendant.

24 33. Plaintiff and each member of the class entered into written credit  
25 agreements with Chase. The agreements were unilaterally drafted and presented to  
26 Plaintiff and the Class by Chase. In each of these agreements, Chase promised to  
27 provide Plaintiff and the Class with consumer credit at a fixed annual percentage rate for  
28 the life of the loan.



1 ability to receive the benefit of the bargains upon which they agreed.

2 42. Defendant's breach of contract caused damage to Plaintiff and Class in the  
3 amount of the \$10 monthly fee, plus interest.

4  
5 **FIFTH CAUSE OF ACTION**

6 **(Declaratory Relief Pursuant to Code of Civil Procedure §1060)**

7  
8 43. Plaintiff incorporates by reference and realleges paragraphs 1-20 previously  
9 alleged herein. This claim is brought on behalf of Plaintiff and the Class against  
10 Defendant.

11 44. Plaintiff, on behalf of himself and the Class, seeks a declaration of rights  
12 and duties pursuant to Code of Civil Procedure § 1060. Specifically, Plaintiff and the  
13 Class seek a judicial declaration that certain terms of the CMA are both procedurally and  
14 substantively unconscionable and, therefore, unenforceable under California law.

15 45. The CMA is a standard form document that was drafted by Chase, which  
16 has superior bargaining power over Plaintiff and the Class. The CMA was offered to  
17 Plaintiff and the Class on a take-it-or-leave-it basis. Accordingly, it is procedurally  
18 unconscionable.

19 46. The CMA contains numerous provisions that are so unfairly one-sided that  
20 they are substantively unconscionable under California law. For example, the CMA  
21 contains a purported Arbitration Agreement that includes numerous one-sided and  
22 unconscionable terms, including the following:

23 a. You will not be able to bring a class action or other representative  
24 action in court such as that in the form of a private attorney general action, nor will you  
25 be able to bring any claim in arbitration as a class action or other representative action.  
26 You will not be able to be part of any class action or other representative action brought  
27 by anyone else, or be represented in a class action or other representative action. In the  
28 absence of this arbitration agreement, you and we may otherwise have had a right or

1 opportunity to bring claims in a court, before a judge or jury and/or to participate or be  
2 represented in a case filed in court by others (including class actions and other  
3 representative actions). Other rights that you would have if you went to a court, such as  
4 discovery or the right to appeal the decision may be more limited, except as otherwise  
5 provided below, those rights are waived.

6           b. . . . If a party elects to arbitrate a Claim, the arbitration will be  
7 conducted as an individual action. Neither you nor we agree to any arbitration on a class  
8 or representative basis, and the arbitrator shall have no authority to proceed on such  
9 basis. This means that even if a class action lawsuit or other representative action, such  
10 as that in the form of a private attorney general action, is filed, any Claim between us  
11 related to the issues raised in such lawsuits will be subject to an individual arbitration  
12 claim if either you or we so elect. No arbitration will be consolidated with any other  
13 arbitration proceeding without the consent of all parties. The only Claims that may be  
14 joined in an individual action under this Arbitration Agreement are (1) those brought by  
15 us against you . . . or (2) those brought by you and any co-applicant, joint card member,  
16 or authorized user of your Account, or your heirs or your trustee in bankruptcy against  
17 us.

18           c. Parties Covered. For the purposes of this Arbitration Agreement, . . .  
19 “we”, “us”, and “our” shall include any third party providing benefits, services, or  
20 products in connection with the Account (including but not limited to credit bureaus,  
21 merchants that accept any credit device issued under the Account, rewards programs and  
22 enrollment services, credit insurance companies, debt collectors, and all of their officers,  
23 directors, employees, agents and representatives) if, and only if, such a third party is  
24 named by you as a co-defendant in any Claim you assert against us.

25           47. The CMA also contains a unilateral change in terms provision that is so  
26 one-sided as to render it unconscionable under California law. Specifically, it provides,  
27 in part:  
28

1 Changes to this agreement: We can change this agreement at any time,  
2 regardless of whether you have access to your account by adding, deleting  
3 or modifying any provision. . . . Unless we state otherwise, any Change will  
4 apply to the unpaid balances on your account and to new transactions. . . .  
5 [T]he notice [of any Change] may state that you may notify us in writing by  
6 a specified date if you do not want to accept certain Changes we are making.  
7 If you notify us in writing that yo do not want to accept the Changes, your  
8 account may be closed (if it is not already closed) and you will be obligated  
9 to notify us in writing by the date stated in the notice . . . .

10 48. Additionally, the CMA contains a choice-of-law provision that provides that  
11 it shall be governed and interpreted in accordance with federal law and, ‘to the extent  
12 state law applies, the law of Delaware, without regard to conflict-of-law principals” will  
13 apply “no matter where you live or use the account.” To the extent that this provision  
14 chooses Delaware over California state law, it violates California choice of law rules and  
15 policy, including, but not limited to, the policy in favor of allowing consumers to address  
16 disputes using the class action mechanism. It is, therefore, unconscionable and  
17 unenforceable as to California consumers.

18  
19 **PRAYER FOR RELIEF**

20  
21 **Wherefore**, Plaintiff, on behalf of himself and all others similarly situated, prays  
22 for judgment against Defendant as follows:

- 23 1. A permanent injunction enjoining Defendant from charging an ASC;  
24 2. Restitution, including reimbursement to Plaintiff and all Class Members of all  
25 monies paid as a result of the imposition of the ASC;  
26 3. An award of any additional equitable relief and/or damages incidental to the  
27 requested injunctive relief;  
28

- 1 4. Declaratory relief as described herein;  
2 5. An award of reasonable attorneys' fees and costs;  
3 6. Statutory pre-judgment and post-judgment interest; and  
4 7. All other relief that this Court may deem just and proper.  
5

6 **DEMAND FOR JURY TRIAL**  
7

8 Plaintiff and the Class demand a jury trial in this action for all the claims so triable.  
9

10 DATED: February 6, 2009.

11 **BRAUN LAW GROUP, P.C.**

12  
13 By 

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