

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE JPMORGAN CHASE CASH  
BALANCE LITIGATION

) Via ECF

) Master File No. 06-cv-0732 (DLC)(DFE)

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

**[PROPOSED] FIRST AMENDED CONSOLIDATED CLASS ACTION COMPLAINT**

**I. INTRODUCTION**

1. Plaintiffs Neil Aldoroty, John J. Berotti, Annette Marie Falchetti, and Perry Shapiro (collectively, “Plaintiffs”), all of whom are participants in the JPMorgan Chase Retirement Plan (the “Plan”), bring this action on their own behalf and on behalf of all similarly situated Plan participants, their beneficiaries and Estates, pursuant to the Employee Retirement Income Security Act of 1974, as Amended (“ERISA”), 29 U.S.C. § 1001, *et seq.*<sup>1</sup>

2. Prior to 2002, Plaintiffs were each subject to an amendment to their defined benefit pension plan that caused a significant reduction in the rate of future benefit accrual, and that constituted a material modification in the terms of their Plan. Defendants were aware of this significant reduction in the rate of future benefit accrual, but did not tell Plaintiffs about it. In fact, Defendants did the opposite – they went out of their way to reassure Plaintiffs that their benefits would be as good or better under the amended plan formulae, and they omitted information from the Plan communications describing the amendments that would have been required to make the communications *not* materially and affirmatively misleading. Defendants

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<sup>1</sup> This amendment relates back to the first class action complaint filed on January 31, 2006 in this consolidated class action. *Wilson v. J.P. Morgan Chase Ret. Plan et al.*, No. 06-CV-0732 (S.D.N.Y. Jan. 31, 2006) [Dkt. 1].

did not disclose to Plaintiffs the fact and the extent of the reduction in the rate of future benefit accrual. Without adequate disclosure, Plaintiffs did not know and could not have known that their rate of future benefit accrual was being reduced by the Plan amendments. Defendants' actions and inactions harmed Plaintiffs by preventing the opportunity for them to make up for their lost pension benefits and to adequately prepare for their retirement.

3. Plaintiffs Aldoroty, Berotti, and Falchetti allege that Defendants violated ERISA sections 102(a), 102(b), 104(b), and 204(h) in connection with Defendants' amendment of The Retirement and Family Benefits Plan of the Chase Manhattan Bank, N.A. to adopt a cash balance formula purportedly effective January 1, 1989.

4. Plaintiff Shapiro alleges that Defendants violated ERISA sections 102(a), 102(b), 104(b), and 204(h) in connection with Defendants' amendment modifying the Retirement Plan of Chemical Bank and Certain Affiliated Companies (the "1993 Chemical Plan") and applying the cash balance plan formula under the 1997 Chase Cash Balance Pension Plan.

5. Plaintiffs allege that these Plan amendments caused a significant reduction in the rate of future pension benefit accruals, but that Defendants failed to deliver to Plaintiffs or similarly situated Plan participants timely, accurate, or substantively sufficient notice of either these amendments or their effects. Defendants' summary plan descriptions, newsletters, and brochures about the amendments included materially false statements, were misleading in their optimistic and congratulatory tone, omitted materially relevant information required to make the communications not affirmatively misleading, did not disclose the fact of benefit reductions, and were not written in a manner calculated to be understood by the average Plan participant. Defendants' summary plan descriptions did not alert plan participants that the plan amendments

caused a significant reduction in the rate of future benefit accrual, did not compare benefits between the amended cash balance formula and the prior formula, and omitted materially relevant information required to make the communications not affirmatively misleading. Although the amendments constitute material modifications to the terms of the Plan, Defendants failed to deliver to Plaintiffs any summaries of material modification describing this change. Defendants' acts and omissions violate ERISA sections 102(a), 102(b), 104(b), and 204(h).

6. Plaintiffs further allege that the Defendant Plan Administrator's actions and inactions in: a) failing to disclose the fact of benefit reductions caused by the 1989 and 1997 Plan amendments; (b) providing Plaintiffs and similarly situated Plan participants misleading information and materially false statements about the 1989 and 1997 Plan amendments; and c) omitting materially relevant information required to make the Plan communications, summary plan descriptions, and other Plan brochures or newsletters regarding the Plan amendments *not* affirmatively misleading, constitute fiduciary breaches under ERISA section 404(a), 29 U.S.C. § 1104(a).

7. As set forth in further detail below, Plaintiffs were prejudiced or likely prejudiced by these alleged fiduciary breaches and by Defendants' failure to comply with the notice and clear communication requirements in ERISA sections 102(a), 102(b), 104(b), and 204(h).

8. Due to Defendants' failure to disclose the fact that the rate of future benefit accrual would significantly decrease under the 1989 and 1997 amendments, and the affirmatively misleading nature of Defendants' Plan communications, Plaintiffs did not understand at the time of amendment, or at any subsequent point just prior to commencing this action, that the Plan amendments at issue significantly reduced their rate of future benefit accrual.

9. Plaintiffs ask the Court to find that: (1) Defendants' communications concerning the 1989 and 1997 Plan amendments did not satisfy ERISA sections 102(a), 102(b), 104(b), 204(h) or their applicable regulations; (2) that the challenged Plan amendments did not become effective; and that (3) Defendants' affirmatively misleading omissions of material information and materially false statements constituted fiduciary breaches under ERISA section 404(a). Plaintiffs seek appropriate declaratory and injunctive relief pursuant to ERISA section 502(a)(3) and incidental to that relief additional benefits under ERISA section 502(a)(1)(B) to enforce the rights they enjoyed under the plan prior to the challenged cash balance plan amendments.

## **II. JURISDICTION AND VENUE**

10. Jurisdiction over this action is based on:

A. ERISA section 502(e)(1), 29 U.S.C. § 1132(e)(1);

B. 28 U.S.C. § 1331(a), because this action arises under the laws of the United States, namely ERISA.

11. Venue in this District is proper pursuant to ERISA section 502(e)(2), 29 U.S.C. § 1132(e)(2), because the Plan is administered in this District, Defendants can be found in this District, and the breach took place in this District.

12. Declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, respectively, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by ERISA sections 502(a)(1)(B) and 502(a)(3), 29 U.S.C. §§ 1132(a)(1)(B) and (a)(3).

### III. PARTIES

#### A. Plaintiffs

13. Plaintiffs are held to an average plan participant standard under ERISA. Plaintiffs lack knowledge of actuarial calculations, actuarial assumptions, or technical ERISA requirements.

14. **Plaintiff Neil Aldoroty** was born in 1947, is a “participant” of the Plan within the meaning of ERISA section 3(7), 29 U.S.C. § 1002(7), and earned pension benefits under the Plan’s cash balance formula. He resides in Hilton Head, South Carolina. Plaintiff Aldoroty holds a high school diploma.

15. Plaintiff Aldoroty began working for Chase Manhattan Corporation in 1967 and continued to work for Chase Manhattan Corporation’s successor companies until 2002. During this time, he worked for Chase and its successor companies as a computer operator, system programmer, and technician.

16. After 35 years of employment with Chase, Plaintiff Aldoroty withdrew a lump sum of approximately \$259,000 from the Plan in December 2005.

17. From the time of the amendment adopting the 1989 Chase Cash Balance Plan until just prior to commencing this action, Mr. Aldoroty did not understand, and due to Defendants’ affirmatively misleading omissions of material information and materially false statements, could not understand, that his rate of future benefit accrual was significantly reduced by the 1989 Chase Cash Balance Plan amendment.

18. At the time of the Plan amendment in 1989, Defendants announced that the new Chase Plan was going to be just as good as or better than the prior plan. Mr. Aldoroty did not and could not understand whether the formula under the 1989 Chase Plan would leave him better or worse off than under his prior plan, because, *inter alia*, Defendants had failed to disclose that

the new Plan would reduce the rate of future benefit accrual and had made misleading statements of material fact about the new Plan.

19. **Plaintiff John J. Berotti** was born in 1949, is a “participant” of the Plan within the meaning of ERISA section 3(7), 29 U.S.C. § 1002(7), and has earned and continues to earn benefits under the Plan’s cash balance formula. He resides in Long Island City, New York. Plaintiff Berotti holds a Bachelor of Science degree in Management.

20. Plaintiff Berotti began working for Chase Manhattan Corporation in 1971 and continued to work for Chase Manhattan Corporation’s successor companies until 2001. During this time, he worked for Chase and its successor companies as an audit supervisor, audit officer, and operations manager in bank branches, corporate operations, and the bank’s money transfer division.

21. Plaintiff Berotti has not withdrawn his benefit from the Plan.

22. From the time of the amendment adopting the 1989 Chase Cash Balance Plan until just prior to commencing this action, Mr. Berotti did not understand, and due to Defendants’ affirmatively misleading omissions of material information and materially false statements, could not understand, that his rate of future benefit accrual was significantly reduced by the 1989 Chase Cash Balance Plan amendment.

23. **Plaintiff Annette Marie Falchetti** was born in 1949, is a “participant” of the Plan within the meaning of ERISA section 3(7), 29 U.S.C. § 1002(7), and has earned and continues to earn benefits under the Plan’s cash balance formula. She resides in New York, New York. Plaintiff Falchetti holds a high school diploma.

24. Plaintiff Falchetti began working for Chase Manhattan Corporation in 1975 and continued to work for Chase Manhattan Corporation’s successor companies until 2001. During

this time, she worked for Chase and its successor companies as a clerical worker in security operations.

25. Plaintiff Falchetti has not withdrawn her benefit from the Plan.

26. From the time of the amendment adopting the 1989 Chase Cash Balance Plan until just prior to commencing this action, Ms. Falchetti did not understand, and due to Defendants' affirmatively misleading omissions of material information and materially false statements, could not understand, that her rate of future benefit accrual was significantly reduced by the 1989 Chase Cash Balance Plan amendment.

27. **Plaintiff Perry Shapiro** was born in 1947, is a "participant" of the Plan within the meaning of ERISA section 3(7), 29 U.S.C. § 1002(7), and has earned and continues to earn pension benefits under the Plan's cash balance formula. He resides in Oceanside, New York. Plaintiff Shapiro has an MBA degree in finance.

28. Plaintiff Shapiro began working for Manufacturers Hanover Trust in 1969 and continued to work for Manufacturers Hanover Trust's successor companies until November 2001. During this time, he worked for Manufacturers Hanover Trust and its successor companies as a management trainee and branch manager.

29. Plaintiff Shapiro has not withdrawn his benefit from the Plan.

30. From the time of the amendment adopting the 1997 Chase Cash Balance Plan until just prior to commencing this action, Mr. Shapiro did not understand, and due to Defendants' affirmatively misleading omissions of material information and materially false statements, could not understand, that his rate of future benefit accrual was significantly reduced by the 1997 Chase Cash Balance Plan amendment.

31. At the time of the amendment merging the Chemical Plan with the 1997 Chase Cash Balance Plan, Defendants announced to Shapiro and similarly situated Plan participants that the new retirement plan was going to be just as good as or better than the prior plan. Defendants failed to disclose that the new plan would significantly reduce the rate of future benefit accrual, and made affirmatively misleading statements that the new plan would be the same or better than the prior Plan. Mr. Shapiro did not and could not understand that the formula under the 1997 Chase Cash Balance Plan would negatively affect his rate of future benefit accrual compared to his formula under the prior plan.

**C. Defendants**

32. Defendant JPMorgan Chase Retirement Plan and the predecessor plans of the JPMorgan Chase & Co. Predecessor Companies, as defined herein (collectively, the “Plan”), is an “employee pension benefit plan” within the meaning of ERISA section 3(2)(A), 29 U.S.C. § 1002(2)(A), and a “defined benefit plan” within the meaning of ERISA section 3(35), 29 U.S.C. § 1002(35). The Plan is administered in this District. The Plan covers employees of JPMorgan Chase & Co. (“JPMC”), which is the successor-in-interest to numerous other companies, including but not limited to The Chase Manhattan Bank (“Chase”), Chemical Bank (“Chemical”), Manufacturers Hanover Trust (“MHT”), and J.P. Morgan & Co., Inc. (“J.P. Morgan”) (collectively, the “JPMC Predecessor Companies” or “JPMorgan Chase & Co. Predecessor Companies”), whose former employees participate in the Plan and/or whose prior retirement plans have been merged with this Plan.

33. JPMC’s Director of Human Resources (or, in the alternative, the person, persons, or entity subsequently or otherwise appointed by the Board of Directors of JPMC or JPMorgan Chase Bank, N.A. to serve in this role) is the Plan Administrator within the meaning

of ERISA section 3(16)(A)(i), 29 U.S.C. § 1002(16)(A)(i), a Plan fiduciary within the meaning of ERISA section 3(21)(A), 29 U.S.C. § 1002(21)(a), and is named as a defendant herein. The Plan Administrator's offices are located in this District. Among numerous other responsibilities, the Plan Administrator has and has had the fiduciary responsibility of communicating truthfully and accurately with Plan participants and beneficiaries concerning the terms of, and benefits available under, the Plan and Predecessor Plans. On information and belief, Edward McGann is the current Plan Administrator.

#### IV. FACTS

##### A. The Traditional Chase Plan Converted to a Cash Balance Plan in 1989.

34. The Chase Manhattan Corporation ("Chase") was a predecessor in interest to JPMC.

35. Prior to January 1, 1989, Chase was the sponsor of a traditional defined benefit pension plan, known as "The Retirement and Family Benefits Plan of the Chase Manhattan Bank, N.A." (hereinafter the "Traditional Chase Plan").

36. As of December 31, 1988, Plaintiffs Aldoroty, Berotti, and Falchetti were vested participants in the Traditional Chase Plan.

37. Under the Traditional Chase Plan, participants retiring after reaching age 60 received a monthly benefit ranging from 1% to 2% (depending on number of years of service) of their final average pay for the highest-paid 60 consecutive months out of the last 120 months of their years of service, as reduced by a social security offset. For example, a participant with up to 20 years of service whose final average pay for her highest-paid 60 consecutive months was \$100,000 would receive a monthly annuity of \$2,000, prior to her social security offset.

38. As of January 1, 1989, Chase purportedly amended its Traditional Chase Plan to adopt a cash balance plan formula. Although Defendants did not disclose it to Plan participants,

the Chase cash balance plan formula caused a significant reduction in participants' rates of future benefit accrual compared to the Traditional Chase Plan.

39. Based on information and analysis known or that should have been known to Defendants at the time of the amendment, the 1989 Chase Cash Balance Plan amendment was reasonably anticipated to provide for a significant reduction in the rate of future benefit accrual for Plaintiffs Aldoroty, Berotti, Falchetti, and all similarly situated Plan participants.

40. Analysis by Plaintiffs' counsel's actuary, based on conservative assumptions and plan provisions known to Defendants at the time of the 1989 cash balance plan amendment, demonstrates that Plaintiffs Aldoroty, Berotti, and Falchetti were each reasonably anticipated to suffer a reduction of approximately 35% to 50% in benefits under the 1989 Chase Cash Balance Plan compared to their benefits under the Traditional Chase Plan. At the time of the 1989 cash balance plan amendment, Defendants were aware of the following projected reductions:

A. At the time of the 1989 cash balance plan amendment, Plaintiff Aldoroty was projected to receive, at normal retirement age, an accrued benefit of \$4,384 per month under the Traditional Chase Plan. Under the 1989 Chase Cash Balance Plan, however, Plaintiff Aldoroty was projected to receive an accrued benefit of \$2,832 per month at normal retirement age. This is a reduction of approximately 35% percent in the accrued benefit. *See* Exhibit A.

B. At the time of the 1989 cash balance plan amendment, Plaintiff Berotti was projected to receive, at normal retirement age, an accrued benefit of \$8,111 per month under the Traditional Chase Plan. Under the 1989 Chase Cash Balance Plan, however, Plaintiff Berotti was projected to receive an accrued benefit of \$4,467 per

month at normal retirement age. This is a reduction of approximately 45% in the accrued benefit. *See* Exhibit B.

C. At the time of the 1989 cash balance plan amendment, Plaintiff Falchetti was projected to receive, at normal retirement age, an accrued benefit of \$3,356 per month under the Traditional Chase Plan. Under the 1989 Chase Cash Balance Plan, however, Plaintiff Falchetti was projected to receive an accrued benefit of \$2,007 per month at normal retirement age. This is a reduction of approximately 40% in the accrued benefit. *See* Exhibit C.

41. Based on the terms of the Plans and the facts and circumstances known or reasonably knowable to the Plan Administrator when it amended the Plan in 1989, Plaintiffs Aldoroty, Berotti, and Falchetti were entitled to receive from the Plan Administrator, but did not receive, an adequate notice pursuant to section 204(h) not less than 15 days before January 1, 1989.

42. Plaintiff Aldoroty continued to accrue benefits under the 1989 Chase Cash Balance Plan and its subsequent amendments through his benefit withdrawal date of December 2005.

43. Plaintiffs Berotti and Falchetti continue through the present day to accrue benefits under the 1989 Chase Cash Balance Plan and its subsequent amendments.

**B. The 1989 Chase Cash Balance Plan.**

44. A cash balance plan is a defined benefit plan that relies on a hypothetical account to keep track of each participant's accrued benefit.

45. Under a cash balance plan, the retirement benefits payable at normal retirement age are determined by reference to the hypothetical account balance as of normal retirement age.

46. A hypothetical cash balance account tracks credited amounts, or “inputs,” to a participant’s hypothetical account by utilizing a formula that is dependent on, among other things, a participant’s age, salary, and years of service.

47. An employee’s hypothetical cash balance account is “credited” on a periodic basis with a percentage of compensation, typically referred to as a “salary” or “pay” credit. Hypothetical cash balance accounts are also credited with an additional amount, sometimes referred to as an “interest” credit, which can be derived in numerous different ways, but are most commonly derived by reference to a fixed or variable outside index.

48. Under the Chase cash balance plan, these periodic contributions are based on “pay credits” and “interest credits.” Pay credits are a percentage of a participant’s salary, as defined in the Chase Plan. Interest credits are additional credits that under the Chase Plan are derived with reference to an outside interest index.

49. Under the Chase Plan, the periodic contributions of pay credits and interest credits form the basis of a hypothetical cash balance “account” for each participant.

50. Because a participant’s cash balance “account” is merely hypothetical, or notional, there are complex actuarial rules and provisions of ERISA that govern how a cash balance plan account is converted into a participant’s accrued benefit, as defined by ERISA.

51. While an employer’s hypothetical allocation of pay credits pursuant to a cash balance plan terminates when the participant discontinues employment, the “interest credits” continue to be allocated to the participant’s cash balance account until benefits are distributed.

52. The actuarial rules and assumptions governing the accrual of benefits under a cash balance plan formula are complex and beyond the knowledge or comprehension of Plaintiffs and the average plan participant.

53. Although a cash balance formula provides for a hypothetical account for each participant, the Plan is not a “defined contribution plan” as that term is defined by ERISA section 3(34), 29 U.S.C. § 1002(34). Instead, it is a “defined benefit plan,” which is defined at ERISA section 3(35), 29 U.S.C. § 1002(35), as “a pension plan other than an individual account plan.”

54. Because a cash balance plan is a defined benefit plan, a participant does not receive the credit balance in his or her hypothetical account upon withdrawal. Instead, the inputs (notional contributions) made to the account must first be projected forward into an age-65 annuity, and then discounted back to present value, if the participant is under age 65.

55. The actuarial assumptions, calculations, and ERISA requirements – including but not limited to the concepts of “actuarial equivalence,” mortality tables, projection rates, discount rates, and the impact of shifting interest rates on annuities and lump sums – involved in converting a hypothetical cash balance account into an age-65 annuity are complex and not understood by Plaintiffs or the average plan participant.

**C. Defendants’ Communications Regarding the 1989 Amendment Adopting the Chase Cash Balance Plan.**

**1988 Communications**

56. In about October 1988, Defendants or their predecessors in interest generated two documents whose purpose appears to have been to introduce the 1989 Chase Cash Balance Plan to plan participants in a positive light: a cover letter from Charles A. Smith, Senior Vice President for Corporate Human Resources, addressed to employees (attached as Exhibit E) and a brochure, entitled “Designs for the Future: New Benefit Approaches at Chase” (attached as Exhibit F). On information and belief, the cover letter and brochure were made available to Plan participants. The documents bear no label indicating that they are intended to comply with

ERISA section 204(h), and Plaintiffs did not understand them to have been provided pursuant to any requirement of ERISA.

57. Although the 1989 Chase Cash Balance Plan caused a significant reduction in the rate of future benefit accrual, neither the 1988 cover letter nor the 1988 “Designs for the Future” revealed this fact. Instead, both documents had an optimistic and congratulatory tone, designed to generate enthusiasm about the amended Plan. Both documents were affirmatively and materially misleading because while omitting the significant reduction in the future accrual of benefits, they emphasized only supposed benefits under the new cash balance Plan compared to the Traditional Chase Plan.

58. For example, the October 1988 cover letter twice describes the new plans as “more attractive.” Ex. E. The cover letter emphasizes that the new plans will have “more choices, improved flexibility and a new opportunity to build financial security.” The letter states:

I want you to think of Chase as a **quality employer**, and part of our effort in obtaining your commitment involves continually seeking ways to make our core **benefits more attractive**. “Designs for the Future” **meets that objective** by offering our employees **new opportunities** . . . and one of the **more innovative programs** in our industry.

Ex. E (emphasis added).

59. The October 1988 cover letter also misleadingly describes the cash balance plan as “new and innovative,” and a “new and exciting way in which to build future financial security.” *Id.*

60. Similarly, the accompanying “Designs for the Future” brochure includes the following misleading statements on its first full page, where it introduces the cash balance plan:

On January 1, 1989, we are making changes in our retirement program . . . changes which introduce a *new* and *innovative* approach to providing your retirement benefits.

Our new approach not only assures **accumulation of funds** for your future, but it also allows you to **watch these funds grow today**. And, it will give you **more flexibility** in planning your own **retirement security**, under a program we think you will find **more responsive** to your individual needs and **easier to understand**.

Your new retirement program is called a Chase Retirement Account (CRA). Credits going into these accounts are based on your pay and service, and we think you will find it offers **more attractive features and opportunities**.

In brief, here are the **highlights** of how the new Chase Retirement Account will work for you . . . .

Ex. F at CBPJPMC00001313 (emphasis added; italics in original).

61. By failing to disclose the significant reduction in future benefit accrual while repeatedly and throughout the brochure using the words and descriptions in the following non-exhaustive list, Defendants affirmatively and materially misled Plan participants that the new cash balance plan was an advantage over the Traditional Chase Plan:

- innovative [Ex. F at CBPJPMC00001313];
- accumulation of funds for your future [*id.*];
- watch these funds grow today [*id.*];
- more flexibility [*id.*];
- retirement security [*id.*];
- more responsive to your individual needs [*id.*];
- easier to understand [*id.*];
- more attractive features and opportunities [*id.*];
- highlights [*id.*];
- will work for you [*id.*];
- rest assured [*id.* at CBPJPMC00001314];
- very excited [*id.*];

- innovations [*id.*];
- several attractive advantages [*id.* at CBPJPMC00001315];
- an account that measures the value [*id.*];
- better meets the needs of our contemporary workforce [*id.*];
- more flexibility [*id.*];
- still at no cost to employees [*id.*];
- competitive advantage [*id.*];
- makes better sense [*id.*];
- no cost to you to participate [*id.*];
- Chase pays the full cost of this plan [*id.*];
- will work for you [*id.* at CBPJPMC00001316];
- balances can accumulate in your account in several ways [*id.*];
- simple formula [*id.*];
- accumulating credits in your personal CRA [*id.*];
- account growth [*id.*];
- this balance would grow further [*id.* at CBPJPMC00001318]; and
- exciting and innovative way to accumulate funds for those years ahead [*id.* at CBPJPMC00001320].

62. In addition to the misleading nature of the language cited above, the 1989 brochure included material misstatements and omissions. These material misstatements not only failed to disclose that participants would have *lower* benefits under the cash balance plan than under the Traditional Chase Plan, but also misleadingly emphasized purported advantages under the new cash balance plan, such as benefits which imposed “no cost” on participants, and

benefits which were as good as, if not better than, the benefits under the Traditional Chase Plan.

For example:

- “[The new cash balance plan] provides a more visible current value to employees than the current pension plan . . . still at **no cost** [Ex. F at CBPJPMC00001315, emphasis added]; and
- “These transitional credits will continue through 1995, **and will help assure that your CRA benefits are similar to or better than the benefit you would receive at retirement under the current plan.**” [*Id.* at CBPJPMC00001316, emphasis added].

63. The 1988 cover letter and “Designs for the Future” brochure unfairly exaggerate the supposed benefits of the 1989 cash balance plan and minimize its disadvantages and limitations. The two documents fails to mention that the new Plan causes a significant reduction in the rate of future benefit accrual and (especially by combining that omission with exaggerations and other misstatements) are affirmatively misleading.

#### **1989 Communications**

64. In 1989, the Plan Administrator did not provide Plaintiffs Aldoroty, Berotti, Falchetti, or similarly situated Plan participants with a summary of material modifications to the Plan as of January 1, 1989.

65. In 1989, the Plan Administrator also did not provide Plaintiffs Aldoroty, Berotti, Falchetti, or similarly situated Plan participants with a summary of material modification that was written in language calculated to be understood by the average Plan participant or that informed of a significant reduction in the rate of future benefit accrual as a result of the 1989 Chase Cash Balance Plan amendment.

#### **1990 Communications**

66. In January 1990, Defendants generated a newsletter entitled “Benefits News,” which describes the Chase cash balance plan and refers to it as the “Chase Retirement Account

(CRA)” (attached as Exhibit G). The document is signed by C.A. Smith, Corporate Human Resources Executive. The one and a half page document includes numerous positive statements about the cash balance plan, and concludes with the following statements:

In conclusion, the [1989 Chase Cash Balance Plan] is a very dynamic approach to retirement planning. This plan is **very attractive**, and offers you the **opportunity to accumulate significant retirement benefits**.

Ex. G at CBPJPMC00001306 (emphasis added).

67. The January 1990 Newsletter bears no label indicating that it was intended to comply with ERISA section 204(h), and Plaintiffs did not understand it to have been provided pursuant to any requirement of ERISA.

68. By describing the Plan as “very attractive” and offering participants the “opportunity to accumulate significant retirement benefits,” *without* disclosing that the 1989 Chase Cash Balance Plan caused a significant reduction in the rate of future benefit accrual, Defendants or their predecessors did not adequately inform and in fact affirmatively and materially misled Plaintiffs and similarly situated Plan participants.

69. As a result of Defendants’ materially misleading statements and omissions, Plaintiffs Aldoroty, Berotti, and Falchetti, and the similarly situated Plan participants whom Plaintiffs seek to represent, were misled into believing that the 1989 Chase Cash Balance Plan was at least as good as, if not better than, the Traditional Chase Plan.

70. At some point in 1990, Defendants generated a summary plan description (“SPD”) entitled “Retirement Plan” (attached as Exhibit H). This SPD continues the material omissions, misleading descriptions, optimism, and congratulatory tone of the earlier documents regarding the 1989 Chase cash balance plan. It does not explain that the 1989 cash balance Plan causes a significant reduction in the rate of future benefit accrual, and it does not provide any

clarifying examples allowing the average plan participant to compare benefit accruals under the Traditional Chase Plan with future benefit accruals under the 1989 Chase Cash Balance Plan.

71. The 1990 “Retirement Plan” SPD emphasizes in its Introduction only the purported advantages of the cash balance plan, but none of its relevant drawbacks. The SPD fails to mention that the cash balance plan provides for a significant reduction in the rate of future benefit accrual:

Effective January 1, 1989, the Chase Retirement Plan was amended to add the Chase Retirement Account (CRA), which provides a new and innovative approach to retirement benefits – and offers you attractive plan features and opportunities.

....

[W]hen your Plan benefits are added to your Social Security benefits and personal savings, the result should be a “retirement nest egg” that lets you think of retirement without worrying about money.

Ex. H at CBPJPMC00015684 (emphasis added).

72. The 1990 SPD also misleads by informing participants that “Chase pays the full cost of the Plan.” *Id.* at CBPJPMC00015692. The SPD misleadingly fails to disclose that Plaintiffs and other Plan participants will have to bear the cost of reduced benefits under the amended Plan.

73. The 1990 SPD misleads when it states, “There are no complicated formulas or calculations you need to perform to determine what the value of your benefit will be at retirement.” Ex. H at CBPJPMC00015693. In fact, the 1989 cash balance formula is highly complicated and requires numerous calculations in order to be comprehensible or to derive a meaningful benefit number. As described above, *see supra* ¶¶ 50-55, a participant’s hypothetical account balance is not independently meaningful. In order to generate a meaningful value, a participant’s account value must be projected forward to normal retirement age under a specified

projection rate, then discounted back to present value, and then converted into an annuity, based on prevailing interest rates. Only after these steps are taken is an average plan participant capable of comparing an accrued benefit under the 1989 cash balance plan to the accrued benefit they would have received under the Traditional Chase Plan. By providing none of this information, while stating that no such calculations or formulas are even required, the SPD was materially and affirmatively misleading.

74. The 1990 SPD describes certain “Transition Credits” that may be available to some Plan participants, but it does not explain why those credits are being offered. The SPD does not explain that the transition credits are being offered to partially offset a reduction in the rate of future benefit accrual under the new cash balance plan. Rather, it explains only that the “Transition Credits” will cause “your account [to] grow even faster.” Ex. H at CBPJPMC00015694.

75. Although the 1990 SPD claims that the account under the new cash balance plan “makes it easy to see what the value of your retirement benefit is now and makes it easy to project how much will be credited to your account each year,” Ex. H at CBPJPMC00015694, the 1990 SPD fails to provide any comparison between the accrued benefit a participant could expect under the Traditional Chase Plan compared with the accrued benefit a participant could expect under the 1989 cash balance plan.

76. The 1990 SPD includes a cursory discussion of a “Minimum Benefit” that does not explain that it is being offered because participants will realize a lower rate of future benefit accrual under the amended cash balance plan. Ex. H at CBPJPMC00015699. The limited discussion of the minimum benefit is not calculated to be understood by the average plan participant. It does not explain who might benefit from it, and does not disclose that the

minimum benefit itself represents a significant reduction in the rate of future benefit accrual compared to the benefit available under the Traditional Chase Plan. *Id.* In sum, Defendants promote the “Minimum Benefit” provision as another purported advantage of the 1989 cash balance plan, rather than disclosing it as an ERISA requirement. Plaintiffs Aldoroty, Berotti, and Falchetti did not understand, and because of their lack of ERISA expertise and Defendants’ failure to fully explain this concept, could not understand, this provision to mean that their benefit accrual under the 1989 cash balance plan would be reduced.

77. The 1990 SPD unfairly exaggerates the supposed benefits of the 1989 cash balance plan and minimizes its disadvantages and limitations.

78. In 1990, the Plan Administrator did not provide Plaintiffs Aldoroty, Berotti, Falchetti, or similarly situated Plan participants with a summary of material modifications to the Plan as of January 1, 1989.

79. In 1990, the Plan Administrator also did not provide Plaintiffs Aldoroty, Berotti, Falchetti, or similarly situated Plan participants with a summary of material modification that was written in language calculated to be understood by the average Plan participant or that informed of a significant reduction in the rate of future benefit accrual as a result of the 1989 Chase Cash Balance Plan amendment.

#### **1991 & 1992 Communications**

80. In 1991 and 1992, the Plan Administrator did not provide Plaintiffs Aldoroty, Berotti, Falchetti, or similarly situated Plan participants with a summary of material modifications to the Plan as of January 1, 1989.

81. In 1991 and 1992, the Plan Administrator also did not provide Plaintiffs Aldoroty, Berotti, Falchetti, or similarly situated Plan participants with a summary of material

modification that was written in language calculated to be understood by the average Plan participant or that informed of a significant reduction in the rate of future benefit accrual as a result of the 1989 Chase Cash Balance Plan amendment.

### **1993 Communications**

82. In 1993, Defendants generated an SPD, also entitled “Retirement Plan” (attached as Exhibit I). This document was made available to Plan participants. The 1993 SPD contains many of the same material misstatements and affirmatively misleading omissions as detailed above with respect to the 1990 SPD. For example, the 1993 SPD does not explain that the 1989 Chase cash balance plan causes a significant reduction in the rate of future benefit accrual. Instead, the 1993 SPD misleadingly informs participants that “Chase pays the full cost of the Plan.” Ex. I at CBPJPMC00001283. The SPD misleadingly fails to disclose that Plaintiffs and other Plan participants will have to bear the cost of reduced benefits under the amended Plan.

83. The 1993 SPD also describes certain “Transition Credits” that may be available to some Plan participants, but it does not explain that those credits are being offered to partially attempt to make up for a reduction in the rate of future benefit accrual. Ex. I at CBPJPMC00001285-86. Instead, the 1993 SPD boasts that, “[f]or employees eligible for both regular credits and transition credits, annual credits to [a cash balance plan account] **can really add up.**” *Id.* at CBPJPMC00001286 (emphasis added).

84. The 1993 SPD provides only a cursory two-sentence description of a “Minimum Benefit” offered by the Plan, and does not explain that this feature is an ERISA requirement. Ex. I at CBPJPMC00001286. Plaintiffs Aldoroty, Berotti, and Falchetti did not understand this

provision to mean that their rate of benefit accrual under the 1989 cash balance plan would be reduced.

85. The 1993 SPD does not provide any clarifying examples allowing participants to compare the rate of benefit accrual under the Traditional Chase Plan with the rate of benefit accrual under the 1989 cash balance plan.

86. The 1993 SPD unfairly exaggerates the supposed benefits of the 1989 cash balance plan and minimizes its disadvantages and limitations.

87. In 1993, the Plan Administrator did not provide Plaintiffs Aldoroty, Berotti, Falchetti, or similarly situated Plan participants, with a summary of material modifications to the Plan as of January 1, 1989.

88. In 1993, the Plan Administrator also did not provide Plaintiffs Aldoroty, Berotti, Falchetti, or similarly situated Plan participants with a summary of material modification that was written in language calculated to be understood by the average Plan participant or that informed of a significant reduction in the rate of future benefit accrual as a result of the 1989 Chase Cash Balance Plan amendment.

**1994 & 1995 Communications**

89. In 1994 and 1995, the Plan Administrator did not provide Plaintiffs Aldoroty, Berotti, Falchetti, or similarly situated Plan participants with a summary of material modifications to the Plan as of January 1, 1989.

90. In 1994 and 1995, the Plan Administrator also did not provide Plaintiffs Aldoroty, Berotti, Falchetti, or similarly situated Plan participants with a summary of material modification that was written in language calculated to be understood by the average Plan

participant or that informed of a significant reduction in the rate of future benefit accrual as a result of the 1989 Chase Cash Balance Plan amendment.

**1996 Communications**

91. In 1996, Defendants generated an SPD entitled “Chase Choice: Benefit Plans” (attached as Exhibit J). This document was made available to Plan participants. The 1996 SPD contains many of the same material misstatements and affirmatively misleading omissions as detailed above with respect to the 1990 and 1993 SPDs. For example, the 1996 SPD does not explain that the 1989 Chase cash balance plan causes a significant reduction in the rate of future benefit accrual. Instead, the 1996 SPD misleadingly informs participants that “Chase pays the full cost of the Plan.” Ex. J at CBPJPMC00001251. The SPD misleadingly fails to disclose that Plaintiffs and other Plan participants will have to bear the cost of reduced benefits under the amended Plan.

92. The 1996 SPD provides only a cursory two-sentence description of a “Minimum Benefit” offered by the Plan, and does not explain that this feature is an ERISA requirement. Ex. J at CBPJPMC00001253. Plaintiffs Aldoroty, Berotti, and Falchetti did not understand, and because of their lack of ERISA expertise and Defendants’ failure to fully explain this concept, could not understand, this provision to mean that their rate of benefit accrual under the 1989 cash balance plan would be reduced compared to their benefits under the Traditional Chase Plan.

93. The 1996 SPD does not provide a clarifying example allowing for an accurate comparison of the rate of benefit accrual under the Traditional Chase Plan with the rate of benefit accrual under 1989 cash balance plan.

94. The 1996 SPD unfairly exaggerates the supposed benefits of the 1989 cash balance plan and minimizes its disadvantages and limitations.

95. In 1996, the Plan Administrator did not provide Plaintiffs Aldoroty, Berotti, Falchetti, or similarly situated Plan participants with a summary of material modifications to the Plan as of January 1, 1989.

96. In 1996, the Plan Administrator also did not provide Plaintiffs Aldoroty, Berotti, Falchetti, or similarly situated Plan participants with a summary of material modification that was written in language calculated to be understood by the average Plan participant or that informed of a significant reduction in the rate of future benefit accrual as a result of the 1989 Chase Cash Balance Plan amendment.

97. Defendants amended the Chase cash balance plan again as of January 1, 1997. The SPDs and SMMs, if any, issued by Defendants with respect to the 1997 Chase Cash Balance Plan amendment do not address the 1989 Chase Cash Balance Plan amendment. As a result, the SPDs and SMMs, if any, issued by Defendants that pertain to the January 1, 1997 amendment perpetuated the misleading nature of Defendants' communications regarding the 1989 amendment and never disclosed the fact that the 1989 amendment provided for a significant reduction in the rate of future benefit accrual compared to the Traditional Chase Plan.

98. Between January 1, 1989 and the present Defendants never provided Plaintiffs Aldoroty, Berotti, Falchetti, or other Plan participants whose benefits were converted under the 1989 Chase case balance plan, any communication calculated to be understood by the average plan participant that corrected the material misstatements and misleading communications described above.

99. Between January 1, 1989 and the present Defendants never provided Plaintiffs Aldoroty, Berotti, Falchetti, or other Plan participants whose benefits were converted under the 1989 Chase case balance plan, any clarifying examples allowing them to compare the rate of

benefit accrual under the Traditional Chase Plan with the rate of benefit accrual under the 1989 Chase cash balance plan, or as subsequently amended.

**D. The Traditional MHT Plan Was Amended to Adopt a Hybrid Cash Balance Plan and Final Average Pay Formula Under the 1993 Chemical Plan.**

100. Manufacturers Hanover Trust (“MHT”) was a predecessor in interest to both Chemical Bank and JPMC.

101. Prior to January 1, 1993, MHT was the sponsor of a traditional defined benefit pension plan (the “Traditional MHT Plan”).

102. As of December 31, 1992, Plaintiff Shapiro was a vested participant in the Traditional MHT Plan.

103. At retirement, participants under the Traditional MHT Plan, were generally entitled to a benefit that was generally equal to 1.25% of final average salary, as defined in the plan, for each year of service up to 20, and .75% of final average salary for each year after that.

104. In 1991, MHT merged with Chemical Bank, but MHT and Chemical Bank continued to maintain their separate pension plans.

105. Chemical Bank was also a predecessor in interest to JPMC.

106. Prior to January 1, 1993, Chemical Bank was the sponsor of a defined benefit pension plan that utilized a cash balance plan formula pursuant to the Cash Plan for Retirement of Chemical Bank and Certain Affiliates (the “1989 Chemical Cash Balance Plan”). Under the 1989 Chemical Cash Balance Plan, participants generally earned compensation credits that ranged from 5% to 7% of salary.

107. Effective January 1, 1993, the Chemical Plan and the Traditional MHT Plan were both amended. As a result of these amendments, the two plans were merged. The resulting

plan was known as The Retirement Plan of Chemical Bank and Certain Affiliated Companies (the “1993 Chemical Cash Balance Plan”).

108. Under the 1993 Chemical Cash Balance Plan, participants generally earned compensation credits that ranged from 4% to 6% of salary.

109. For participants such as Plaintiff Shapiro who were participants in the Traditional MHT Plan, the 1993 Chemical Cash Balance Plan also offered an additional final average pay component.

**E. The 1993 Chemical Plan Was Amended to Eliminate its Final Average Pay Component, Among Other Changes, Under the 1997 Chase Cash Balance Plan.**

110. As of December 31, 1996, Plaintiff Shapiro was a vested participant in the 1993 Chemical Cash Balance Plan, and he earned benefits under a hybrid formula. A portion of his benefits were derived pursuant to a cash balance plan formula, and a portion of his benefits were derived pursuant to a final average pay formula.

111. In 1996, Chemical merged with Chase, and the surviving entity retained the Chase name. By amendment on or about January 1, 1997 the 1989 Chase Cash Balance Plan was merged with the 1993 Chemical Cash Balance Plan, creating the 1997 Chase Cash Balance Plan.

112. For Plaintiff Shapiro and other similarly situated Plan participants who were participants in the Traditional MHT Plan, the 1997 Chase Cash Balance Plan eliminated the final average pay component that had been a portion of the benefit provided to them under the 1993 Chemical Plan.

113. The 1997 Chase Cash Balance Plan offered only a cash balance plan formula.

114. Generally, under the 1997 Chase Cash Balance Plan, pay credits ranged from 4% to 14% of salary. Interest credits were based upon the average rate for one-year U.S.

Treasury bills for the months of September, October, and November of the previous year, plus one percent.

115. Although Defendants did not disclose this fact to Plaintiff Shapiro or similarly situated Plan participants, the amended formula under the 1997 Chase Cash Balance Plan caused a significant reduction in the rate of future benefit accrual from the formula Mr. Shapiro and similarly situated Plan participants had been provided under the 1993 Chemical Cash Balance Plan.

116. Based on information and analysis known or that should have been known to Defendants at the time of the amendment, the 1997 Chase Cash Balance Plan was reasonably anticipated to provide for a significant reduction in the rate of future benefit accrual for Plaintiff Shapiro and similarly situated Plan participants.

117. Analysis by Plaintiffs' counsel's actuary, based on conservative assumptions and plan provisions known to Defendants at the time of the 1997 amendment, demonstrates that at normal retirement age, Plaintiff Shapiro was projected to receive an accrued benefit of \$6,987 per month under the 1993 Chemical Cash Balance Plan. This benefit would be made up of two components: the hypothetical cash balance account, converted to a monthly annuity (\$3,698 per month), plus the monthly benefit under the traditional final average pay component (\$3,290 per month). Under the 1997 Chase Cash Balance Plan, however, Shapiro was projected to receive an accrued benefit of \$5,940 at normal retirement age. This is a reduction of approximately 15%. Thus, Defendants should reasonably have anticipated Plaintiff Shapiro to suffer a reduction of at least 15% in his benefit under the 1997 Chase Cash Balance Plan. *See* Exhibit D.

118. Based on the terms of the Plans and reasonable facts and circumstances known to the Plan Administrator when it amended the Plan in 1997, Plaintiff Shapiro was entitled to

receive from the Plan Administrator, but did not receive, an adequate notice pursuant to section 204(h) not less than 15 days prior to January 1, 1997.

119. Plaintiff Shapiro continues through the present day to accrue benefits under the 1997 Chase Cash Balance Plan and its subsequent amendments.

**E. Defendants' Communications Regarding the Amendments Adopting the 1997 Chase Cash Balance Plan.**

120. In September 1996, Defendants generated a one-page letter signed by Walter V. Shipley, Chase Chairman and Chief Executive Officer, and Thomas G. Labrecque, Chase President and Chief Operating Officer, that enclosed a "Highlights brochure" which purported to introduce the new Chase benefit program to participants (attached as Exhibit K).

121. The September 1996 letter strikes a congratulatory tone, and is affirmatively misleading, in that it fails to inform participants that the retirement benefits under the new Plan will cause a significant reduction in the rate of future benefit accrual for former MHT employees while simultaneously describing the new benefits as "highly competitive" and offering Chase employees "quality, value, and choice." Ex. K at CBPJPMC00003577.

122. The September 1996 Highlights brochure enclosed with the letter provides an overview of the new benefits program, but does not tell participants who are former MHT employees that the Plan amendment will cause a significant reduction in the rate of future benefit accrual. Instead, the brochure misleads by suggesting that benefits will *increase* under the 1997 Chase Cash Balance Plan:

The Retirement Plan increases your opportunity to build toward a more secure retirement. . . . Your benefit builds up in two ways – through pay credits and interest credits.

Ex. K at CBPJPMC00003581 (emphasis added).

123. In about October 1996, Defendants generated an SPD entitled, “CHASE*Choice*: Planning for the Future” (attached as Exhibit L). The 1996 SPD continues to mislead about the 1997 Chase Cash Balance Plan, describing the amendment as an enhanced benefit over current offerings:

With so many demands on your current income, it is important to have a plan that helps you build the financial future you want. CHASE*Choice* **offers income-building benefits** that will help you form **a solid financial picture** – especially when it is time for your retirement. These benefits include:

...

the Retirement Plan, a program paid for in full by Chase, that **helps build a more secure retirement**.

Ex. L at CBPJPMC00003587 (emphasis added).

124. The 1996 SPD does not tell participants who are former MHT employees that the Plan amendment will cause a significant reduction in the rate of future benefit accrual. Instead, the 1996 SPD misleadingly informs participants that “You pay nothing for your Retirement Plan Benefits. Chase pays for the entire cost of the Plan.” Ex. L at CBPJPMC00003608. The SPD misleadingly fails to disclose that Plaintiff Shapiro and other Plan participants will have to bear the cost of reduced benefits under the amended Plan.

125. The 1996 SPD does not compare benefit accrual under the 1997 Chase Cash Balance Plan with the rate of future benefit accrual for former MHT employees under the 1993 Chemical Plan. The two examples that the SPD does provide, *see* Ex. L at CBPJPMC00003610, are materially misleading because they omit any explanation or visual representation of a decrease in the rate of future benefit accrual for former MHT employees while emphasizing only purported benefits of the 1997 Chase Plan, without mentioning its drawbacks.

126. The 1996 SPD further misleads because it emphasizes Defendants’ use of two assumptions used in converting monthly benefits into a cash balance amount that it emphasizes

are “favorable to Plan participants.” Ex. L at CBPJPMC00003612. Without an explanation, however, that the conversion to the cash balance formula under the 1997 Chase Plan is detrimental to former MHT employees, this description of the conversion assumptions as “favorable” is materially misleading based on the information it omits. Because it does not explain that despite these “favorable” assumptions, the 1997 Chase Cash Balance Plan will still reduce the rate of future benefit accrual for former MHT employees, the 1996 SPD materially and affirmatively misleads by omission.

127. The 1996 SPD includes a brief description of a “Minimum Benefit” that is not written in a manner calculated to be understood by the average plan participant. The “Minimum Benefit” description is also materially misleading because it is presented as an added feature, rather than an ERISA requirement. Ex. L at CBPJPMC00003615. An SPD Defendants generated and provided in about 1999 repeats similar statements regarding the “Minimum Benefit” feature, and suffers the same defects as alleged in this paragraph with respect to the 1996 SPD. Plaintiff Shapiro did not understand and because of his lack of ERISA expertise and Defendants’ failure to fully explain this concept, could not understand, this provision in either the 1996 SPD or Appendix II of the 1999 SPD to mean that his rate of benefit accrual under the 1993 Chemical Plan would be reduced under the 1997 Chase cash balance Plan.

128. On about December 16, 1996, Defendants generated a one-page document labeled in its footer as a “notice” (attached as Exhibit M). In miniscule, italicized font, the footer of the document reads in its entirety, “This notice is provided to you in accordance with regulations issued by the Internal Revenue Service.” Ex. M at CBPJPMC00000840. Plaintiffs did not understand that this document was provided pursuant to ERISA section 204(h), or pursuant to any other requirement of ERISA.

129. Under the paragraph heading, “The Retirement Plan,” the document states, “This is to remind you that The Retirement and Family Benefits Plan of The Chase Manhattan Bank, N.A. and the Retirement Plan of Chemical Bank and Certain Affiliated Companies will be merged as of close of business on December 31, 1996. Effective January 1, 1997, benefits will be provided under the Retirement Plan of The Chase Manhattan Bank and Certain Affiliated Companies in accordance with the benefit schedule previously announced.” Ex. M at CBPJPMC00000840.

130. This December 1996 document does not set forth the Plan amendment, is not a summary of material modification to the Plan, and does not tell participants who are former MHT employees that the amendment will cause a significant reduction in their rate of future benefit accrual.

131. In 1997, the Plan Administrator did not provide Plaintiff Shapiro or similarly situated Plan participants with a summary of material modifications to the Plan as of January 1, 1997.

132. The Plan Administrator also did not provide Plaintiff Shapiro or similarly situated Plan participants at any point with any summary of material modifications to the Plan that was written in language calculated to be understood by the average Plan participant or that informed of a significant reduction in the rate of future benefit accrual as a result of the change from the 1993 Chemical Plan to the 1997 Chase Cash Balance Plan amendment.

133. Defendants subsequently amended the 1997 Chase Cash Balance Plan, including as of January 1, 2002 and January 1, 2005. The SPDs, notices, if any, and SMMs, if any, issued by Defendants with respect to these Plan amendments do not address either the 1997 Chase cash balance plan amendment, or the significant reduction in the rate of future benefit

accrual former MHT employees, like Plaintiff Shapiro, experienced as a result of the 1997 amendment. As a result, the SPDs, notices, if any, and SMMs, if any, issued by Defendants that pertain to the period after January 1, 1997 perpetuate the affirmatively misleading nature of Defendants' communications regarding the 1997 amendment and continued not to disclose the fact that the 1997 amendment provided for a significant reduction in the rate of future benefit accrual for former MHT employees compared to that under the 1993 Chemical Plan.

134. Between January 1, 1997 and the present Defendants never provided Plaintiff Shapiro or other Plan participants whose benefits were converted from the 1993 Chemical Cash Balance Plan to the 1997 Chase Cash Balance Plan any communication calculated to be understood by the average plan participant that corrected the material misstatements and affirmatively misleading omissions described above.

135. Between January 1, 1997 and the present Defendants never provided Plaintiff Shapiro or other similarly situated Plan participants any communication that disclosed that the accrued benefit they would have received under the 1993 Chemical Plan was significantly greater than the accrued benefit they were reasonably expected to receive under the 1997 Chase Cash Balance Plan.

## **V. CLASS ACTION ALLEGATIONS**

136. Plaintiffs bring this action on their own behalf and, pursuant to the provisions of the Federal Rules of Civil Procedure, on behalf of a class of all others similarly situated, defined as all Plan participants, whether active, inactive or retired, their beneficiaries and Estates, whose accrued benefits or pension benefits were directly impacted by: 1) the January 1, 1989 conversion of the Traditional Chase Plan to a cash balance plan formula under the 1989 Chase Cash Balance Pension Plan; or 2) for participants in the Traditional MHT Plan who accrued

benefits under both a final average pay and cash balance plan formula under the 1993 Chemical Plan, the January 1, 1997 amendment adopting the 1997 Chase Cash Balance Plan.

137. Plaintiffs reserve the right to subsequently amend this class definition, or to allege subclasses.

138. The requirements for maintaining this action as a class action under Rule 23(b)(1) and (b)(2), Federal Rules of Civil Procedure, are satisfied in that:

A) The members of the class are so numerous that joinder of all members is impracticable;

B) The class is large in number; the exact number and identities of all class members are currently unknown to Plaintiffs, but are known to Defendants. The number of class members is believed to be in the tens of thousands;

C) There are questions of law and fact common to all members of the class, such as whether the Plan amendments caused a significant reduction in the rate of future benefit accrual, whether Defendants complied with ERISA sections 102(a), 102(b), 104(b), 204(h), and their applicable regulations in communicating with Plaintiffs and the class regarding the 1989 and 1997 Plan amendments, whether the Defendant Plan Administrator breached its fiduciary duty of full and truthful disclosure in its communications about the Plan amendments, whether Defendants failed to disclose the fact of benefit reductions under the cash balance Plan amendments, and whether the challenged Plan amendments ever became effective in light of these alleged ERISA violations;

D) Plaintiffs are members of the class as defined above; their claims are typical of the claims of the members of the class and they will fairly and adequately

protect the interests of the class. Plaintiffs' interests are coincident with, and not antagonistic to, those of the remainder of the class, and Plaintiffs are represented by experienced ERISA class action counsel;

E) The prosecution of separate actions by individual members of the class would create the risk of inconsistent or varying adjudications establishing incompatible standards of conduct for Defendants and a risk of adjudications which as a practical matter would be dispositive of the interests of other members of the class who were not parties; and

F) Defendants have acted or refused to act and are likely to act or refuse to act on grounds generally applicable to the class, thereby making appropriate final injunctive and other relief with respect to the class as a whole.

## VI. CLAIMS FOR RELIEF

### FIRST CLAIM FOR RELIEF

#### **Failure to Deliver Adequate Notice of Plan Amendment Providing For a Significant Reduction in the Rate of Future Benefit Accrual for the 1989 Conversion of the Traditional Chase Plan to a Cash Balance Plan Formula**

**(For Violation of ERISA section 204(h), 29 U.S.C. § 1054(h))**

139. Plaintiffs repeat and reallege each and every allegation above.

140. As enacted in 1986, ERISA section 204(h), 29 U.S.C. § 1054(h), provided in pertinent part:

#### **Notice of Significant Reduction in Benefit Accruals**

[A defined benefit plan] may not be amended so as to provide for a significant reduction in the rate of future benefit accrual, unless, after adoption of the plan amendment and not less than 15 days before the effective date of the plan amendment, the plan administrator provides a written notice, setting forth the plan amendment and its effective date, to (1) each participant in the plan, (2) each beneficiary who is an alternate payee . . . , and (3) each employee organization representing participants in the plan. . . .

Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), Pub. L. No. 99-272, § 11006, 100 Stat. 82, 243 (1986).

141. Defendants' Plan amendment purportedly adopting a cash balance plan formula as of January 1, 1989 provided for a significant reduction in the rate of future benefit accrual, thereby triggering the notice requirements of ERISA section 204(h).

142. At no point in time did Defendants provide a written notice "setting forth" the 1989 cash balance plan amendment to each participant in the plan.

143. Rather, Defendants generated a cover letter and the "Designs for the Future" brochure which, as alleged above, were affirmatively and materially misleading: while failing to disclose the fact of significant reduction in the future rate of benefit accrual, they were misleadingly optimistic and congratulatory, did not adequately describe the cash balance plan amendment, and provided material misstatements about purported advantages of the cash balance plan compared to the Traditional Chase Plan.

144. At no point in time did Defendants issue any other notice, SPD, or other Plan communication that satisfies the requirements of ERISA section 204(h) with respect to the 1989 Chase Cash Balance Plan amendment.

145. Defendants failed to deliver notice to Plaintiffs Aldoroty, Berotti, Falchetti, and similarly situated Plan participants with respect to the adoption of the Chase cash balance plan formula as of January 1, 1989 that complied with ERISA section 204(h).

146. Defendants' communications regarding the 1989 adoption of the Chase cash balance formula also violated the requirements of ERISA section 204(h), 29 U.S.C. § 1054(h), with respect to their timing and content.

147. These violations prejudiced or likely prejudiced Plaintiffs and similarly situated Plan participants by precluding them from understanding the impact of the cash balance formula and preventing them from further supplementing their retirement savings, seeking other employment, or other action. Based on calculations by Plaintiffs' counsel's actuary, the 1989 cash balance plan conversion, as it was actually implemented, led to a reduction in accrued benefit of at least \$190,210 for Plaintiff Aldoroty (as of the date of his benefit withdrawal), of at least \$232,510 for Plaintiff Berotti, and of at least \$25,864 for Plaintiff Falchetti. These figures are based on the latest Plan data available to Plaintiffs.<sup>2</sup>

148. ERISA section 204(h) provides that a plan may not be amended if it fails to comply with the statutory requirements.

149. As a result of Defendants' violations of ERISA section 204(h), the 1989 adoption of the Chase Cash Balance Plan never became effective.

150. Accordingly, Plaintiffs Aldoroty, Berotti, Falchetti, and similarly situated Plan participants are entitled to appropriate equitable relief, including equitable relief under ERISA section 502(a)(3), as set forth in more detail in Plaintiffs' Prayer for Relief.

## **SECOND CLAIM FOR RELIEF**

### **Failure to Deliver Adequate Notice of Plan Amendment Providing For a Significant Reduction in the Rate of Future Benefit Accrual for Former MHT Employees for the Amendment Adopting the 1997 Chase Cash Balance Plan**

**(For Violation of ERISA section 204(h), 29 U.S.C. § 1054(h))**

151. Plaintiffs repeat and reallege each and every allegation above.

152. As enacted in 1986, ERISA section 204(h), 29 U.S.C. § 1054(h), provided in pertinent part:

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<sup>2</sup> Plaintiffs reserve the right to modify these calculations as further factual information becomes available in discovery.

**Notice of Significant Reduction in Benefit Accruals**

[A defined benefit plan] may not be amended so as to provide for a significant reduction in the rate of future benefit accrual, unless, after adoption of the plan amendment and not less than 15 days before the effective date of the plan amendment, the plan administrator provides a written notice, setting forth the plan amendment and its effective date, to (1) each participant in the plan, (2) each beneficiary who is an alternate payee . . . , and (3) each employee organization representing participants in the plan. . . .

Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), Pub. L. No. 99-272, § 11006, 100 Stat. 82, 243 (1986).

153. Defendants' Plan amendment adopting the Chase Cash Balance Plan as of January 1, 1997 provided for a significant reduction in the rate of future benefit accrual, thereby triggering the notice requirements of ERISA section 204(h).

154. At no point in time did Defendants provide a written notice "setting forth" the 1997 Plan amendment to each participant in the Plan.

155. Rather, Defendants generated the documents described above which misleadingly stated that the 1997 Chase Cash Balance Plan "increases your opportunity to build toward a more secure retirement," that it utilizes "favorable" benefit conversion assumptions, and that "You pay nothing for your Retirement Plan Benefits. Chase pays for the entire cost of the Plan." These statements are affirmatively and materially misleading based on their omissions and are material misstatements about purported advantages of the cash balance plan compared to the benefit formula for former MHT employees under the 1993 Chemical Plan.

156. At no point in time between did Defendants issue any other notice, SPD, or other Plan communication that satisfies the requirements of ERISA section 204(h) with respect to the 1997 amendment adopting the Chase Cash Balance Plan.

157. Defendants failed to deliver any notice that complied with ERISA section 204(h) to Plaintiff Shapiro and similarly situated Plan participants with respect to the amendment adopting the 1997 Chase Cash Balance Plan.

158. Defendants' communications regarding the 1997 adoption of the Chase Cash Balance Plan also violated the requirements of ERISA section 204(h), 29 U.S.C. § 1054(h), with respect to their timing and content.

159. These violations prejudiced or likely prejudiced Plaintiff Shapiro and similarly situated Plan participants by precluding them from understanding the impact of the cash balance formula and preventing them from further supplementing their retirement savings, seeking other employment, or other action. Based on calculations by Plaintiffs' counsel's actuary, the 1997 adoption of the Chase Cash Balance Plan, as that Plan was actually implemented, led to a reduction in accrued benefit of at least \$60,499 for Plaintiff Shapiro. This figure is based on the latest Plan data available to Plaintiffs.<sup>3</sup>

160. ERISA section 204(h) provides that a plan may not be amended if it fails to comply with the statutory requirements.

161. As a result of Defendants' violations of ERISA section 204(h), the 1997 adoption of the Chase Cash Balance Plan never became effective.

162. Accordingly, Plaintiff Shapiro and similarly situated Plan participants are entitled to appropriate equitable relief, including equitable relief under ERISA section 502(a)(3), as set forth in more detail in Plaintiffs' Prayer for Relief.

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<sup>3</sup> Plaintiff Shapiro reserves the right to modify this calculation as further factual information becomes available in discovery.

**THIRD CLAIM FOR RELIEF**  
**Failure to Provide Adequate Summary Plan Descriptions**

**(For Violations of ERISA sections 102, 104(b), 29 U.S.C. §§ 1022, 1024 and 29 C.F.R. § 2520.102-2)**

163. Plaintiffs repeat and reallege each and every allegation above.

164. ERISA section 102(a), 29 U.S.C. § 1022(a), requires the Plan administrator to provide all participants and beneficiaries with a summary plan description (“SPD”):

The summary plan description shall include the information described in subsection (b) of this section, **shall be written in a manner calculated to be understood by the average plan participant, and shall be sufficiently accurate and comprehensive to reasonably apprise** such participants and beneficiaries of their rights and obligations under the plan.

(emphasis added).

165. In turn, ERISA section 102(b), 29 U.S.C. § 1022(b), provides in pertinent part:

The summary plan description shall contain the following information: ... the plan’s requirements respecting eligibility for ... benefits; ... circumstances which may result in disqualification, ineligibility, or denial or loss of benefits ....

166. Similarly, 29 C.F.R. § 2520.102-2 provides in pertinent part:

(a) *Method of presentation.* The summary plan description **shall be written in a manner calculated to be understood by the average plan participant and shall be sufficiently comprehensive to apprise the plan’s participants and beneficiaries of their rights and obligations under the plan** ... Consideration of these factors will usually require ... the use of **clarifying examples and illustrations**, the use of clear cross-references and a table of contents. (b) *General format.* **The format of the summary plan description must not have the effect [of] misleading, misinforming or failing to inform participants and beneficiaries. Any description of exceptions, limitations, reductions, and other restrictions of plan benefits shall not be minimized, rendered obscure or otherwise made to appear unimportant.** Such exceptions, limitations, reductions, or restrictions of plan benefits shall be described or summarized in a manner not less prominent than the style, captions, printing type, and prominence used to describe or summarize plan benefits. **The advantages and disadvantages of the plan shall be presented without either exaggerating the benefits or minimizing the limitations.** The description or summary of restrictive plan provisions need not be disclosed in the summary plan description in close conjunction with the description or summary of benefits, provided that

adjacent to the benefit description the page on which the restrictions are described is noted.

(emphasis added).

167. None of the SPDs discussed above or received by Plaintiffs describe, explain, or summarize the 1989 or 1997 Chase cash balance Plans in compliance with these requirements. The SPDs are affirmatively and materially misleading, in that they fail to disclose the significant reduction in the rate of future benefit accrual under the new Plan formulae, do not provide clarifying examples and illustrations, and exaggerate the purported benefits of the new Plans, while minimizing their disadvantages and limitations.

168. ERISA section 104(b), 29 U.S.C. § 1024(b), provides the schedule under which the Plan Administrator must furnish each participant, and each beneficiary receiving benefits under the plan, a copy of the summary plan description, and all modifications and changes referred to in ERISA section 102(a). Generally, the Plan Administrator must provide an SPD not later than 210 days after the end of the plan year in which the change is adopted to each participant.

169. The failure of Defendants' Summary Plan Descriptions to fully disclose or explain Plan provisions that negatively impacted the future benefits participants reasonably expected to receive violates ERISA sections 102, 104, 29 U.S.C. §§ 1022, 1024 and 29 C.F.R. § 2520.102. These failures and omissions prejudiced or likely prejudiced Plaintiffs and similarly situated Plan participants by precluding them from understanding the impact of the cash balance formula and preventing them from further supplementing their retirement savings, seeking other employment, or other action. *See also supra* ¶¶ 147, 159.

170. Accordingly, Plaintiffs and similarly situated Plan participants are entitled to appropriate equitable relief, including equitable relief under ERISA section 502(a)(3), as set forth in more detail in Plaintiffs' Prayer for Relief.

**FOURTH CLAIM FOR RELIEF**  
**Failure to Provide Summaries of Material Modification to Plan**

**(For Violations of ERISA sections 102(a), 104(b), 29 U.S.C. §§ 1022(a), 1024(b), and 29 C.F.R. § 2520.104b-3)**

171. Plaintiffs repeat and reallege each and every allegation above.

172. ERISA section 102(a), 29 U.S.C. § 1022(a), provides:

A summary of any material modification in the terms of the plan and any change in the information required under subsection (b) of this section **shall be written in a manner calculated to be understood by the average plan participant** and shall be furnished in accordance with section [104(b)(1), 29 U.S.C. §] 1024(b)(1) of this title.

(emphasis added).

173. 29 C.F.R. § 2520.104b-3 governs in greater detail the timing and content requirements of summaries of material modifications ("SMMs"). As it was codified prior to April 8, 1997, the regulation provides, in pertinent part:

(a) The administrator of an employee benefit plan subject to the provisions of part 1 of title I of the Act shall, in accordance with § 2520.104b-1(b), furnish a summary description of any material modification to the plan and any change in the information required by section 102(b) of the Act and § 2520.102-3 of these regulations to be included in the summary plan description to each participant covered under the plan and each beneficiary receiving benefits under the plan. **The plan administrator shall furnish this summary, written in a manner calculated to be understood by the average plan participant, not later than 210 days after the close of the plan year in which the modification or change was adopted.** . . . A plan which adopts an amendment which makes a material modification to the plan which takes effect on a date in the future must disclose a summary of that modification within 210 days after the close of the plan year in which the modification or change is adopted.

42 Fed. Reg. 37188 (July 19, 1977) (emphasis added). A minor addition of text to the regulation as of April 8, 1997 does not modify the obligation set forth above.

174. Because they caused a significant reduction in the rate of future benefit accrual, the 1989 Chase Cash Balance Plan amendment and the 1997 Chase Cash Balance Plan amendment constituted material modifications to the terms of the Plan.

175. In discovery prior to May 30, 2007, Plaintiffs asked Defendants to produce all SMMs related to the 1989 and 1997 Chase Cash Balance Plan amendments, but none have been produced. Plaintiffs are not aware of and not in possession of any SMM informing them that either the 1989 or 1997 Chase Cash Balance Plan amendment would reduce their rate of future benefit accrual. Accordingly, on information and belief, Plaintiffs allege that the Plan Administrator failed to provide these required SMMs.

176. The Plan Administrator's actions and inactions described above constitute violations of ERISA sections 102(a) and 104(b), 29 U.S.C. §§ 1022(a) and 1024(b). They also prejudiced or likely prejudiced Plaintiffs and similarly situated Plan participants, by precluding them from understanding the impact of the cash balance formula and preventing them from further supplementing their retirement savings, seeking other employment, or other action. *See also supra* ¶¶ 147, 159.

177. Accordingly, Plaintiffs and similarly situated Plan participants are entitled to appropriate equitable relief, including equitable relief under ERISA section 502(a)(3), as set forth in more detail in Plaintiffs' Prayer for Relief.

**FIFTH CLAIM FOR RELIEF**  
**Fiduciary Breach – Against the JPMC Plan Administrator**  
**(For Violation of ERISA section 404(a), 29 U.S.C. § 1104(a))**

178. Plaintiffs repeat and reallege each and every allegation above.

179. By intentionally, recklessly, or negligently making the materially false statements described above, by failing to disclose the fact of benefit reductions under the cash

balance plan amendments, and by failing to comply with ERISA sections 102(a), 102(b) 104(b), and 204(h), the Defendant Plan Administrator has breached the fiduciary duties it owes to Plan participants under ERISA section 404(a), including the duty of full and fair disclosure.

180. The Defendant Plan Administrator failed to disclose material information about the impact of the cash balance plan amendments on Plaintiffs' pension benefits. In the context of this omission of information, the Plan Administrator made statements of material fact about the amendments, thereby affirmatively misleading Plaintiffs and the members of the proposed class. In particular, the Plan Administrator's fiduciary breaches have prevented Plaintiffs and members of the proposed class from understanding that their benefits under the cash balance plan formula, as amended, are lower than their benefits under their prior plans.

181. When the Defendant Plan Administrator made the affirmatively misleading omissions alleged herein it was communicating with Plan participants and beneficiaries about Plan benefits and Plan terms, and thus was acting in its fiduciary capacity.

182. Plaintiffs have been prejudiced or likely prejudiced by the Plan Administrator's affirmatively misleading statements about—and nondisclosures of material information about—the benefit reductions under the cash balance Plan amendments. As a result of these ERISA violations, Plaintiffs and all similarly situated cash balance plan participants have been adversely affected, *inter alia*, in their retirement planning, their understanding of the terms and conditions under which they continued employment, and their knowledge at or prior to retirement of whether they are receiving the benefits to which they are entitled under ERISA. *See also supra* ¶¶ 147, 159.

183. Accordingly, Plaintiffs and similarly situated Plan participants are entitled to appropriate equitable relief against the Defendant Plan Administrator, including equitable relief under ERISA section 502(a)(3), as set forth in more detail in Plaintiffs' Prayer for Relief.

## VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court enter judgment as follows:

A. Certifying this action as a class action, or in the alternative if no class is certified, extending the relief secured by Plaintiffs to all Plan participants pursuant to ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3);

B. Declaring:

1. that Defendants failed to deliver notices that complied with ERISA section 204(h), 29 U.S.C. § 1054(h), as to timing and content for the cash balance Plan amendments purportedly effective as of January 1, 1989 or January 1, 1997, so that the cash balance formulae purportedly effective on those dates are ineffective, invalid, and void *ab initio* (First and Second Claims for Relief);

2. that the Summary Plan Descriptions summarizing the cash balance formulas purportedly effective as of January 1, 1989 or January 1, 1997 violated ERISA sections 102, 104(b), 29 U.S.C. §§ 1022, 1024(b), and 29 C.F.R. § 2520.102 (Third Claim for Relief);

3. that the failure to provide Summaries of Material Modification alerting Plaintiffs Aldoroty, Berotti, Falchetti, and similarly situated Plan participants that the 1989 Chase Cash Balance Plan reduced the rate of future benefit accrual violated ERISA sections 102(a), 104(b), 29 U.S.C. §§ 1022(a), 1024(b), and 29 C.F.R. § 2520.104b-3 (Fourth Claim for Relief);

4. that the failure to provide Summaries of Material Modification alerting Plaintiff Shapiro and similarly situated Plan participants that the 1997 Chase Cash Balance Plan reduced the rate of future benefit accrual violated ERISA sections 102(a), 104(b), 29 U.S.C. §§ 1022(a), 1024(b) and 29 C.F.R. § 2520.104b-3 (Fourth Claim for Relief); and

5. that the Defendant Plan Administrator breached its fiduciary duty under ERISA section 404(a), 29 U.S.C. § 1104(a) by: (a) intentionally, recklessly, or negligently providing misleading information and making materially false statements about the cash balance plan amendments; (b) omitting to state material facts necessary to make the statements about the cash balance plan amendments not misleading, in light of the circumstances under which they were made; and (c) failing to disclose to Plaintiffs and the Class the fact of benefit reductions under the cash balance plan amendments (Fifth Claim for Relief).

C. Enjoining Defendants from enforcing the unlawful Plan amendments purportedly adopted as of January 1, 1989 and January 1, 1997;

D. Incidental to the injunctive relief sought in Counts I through V, pursuant to ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3), and mechanically flowing from that injunctive relief, Plaintiffs and the Class also seek a Court order ordering Defendants to recalculate the accrued benefits of Plaintiffs and the Class, or in the alternative to recalculate the accrued benefits of Plaintiffs and all similarly situated Plan participants, based on the greater of the benefit formula sought to be amended in violation of ERISA section 204(h), or the pre-amendment formula, through to the present or the date of the

participant's withdrawal of benefits, with interest at the highest allowable rate, compounded monthly;

E. Incidental to the injunctive relief sought in Counts I through V, pursuant to ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3), and mechanically flowing from that injunctive relief, Plaintiffs and the Class also seek a Court order requiring Defendants to create a common fund from which Defendants are ordered to make a retroactive payment of pension benefits to Plaintiffs and the Class, or in the alternative to Plaintiffs and all similarly situated Plan participants, in an amount equal to the difference between what Plaintiffs and Class members were paid previously, and what the Court-ordered recalculation of benefits shows they should have been paid, based on the respective Plan's pre-amendment formula, through to the present or the date of the participant's withdrawal of benefits, with interest at the highest allowable rate compounded monthly;

F. Alternatively, and incidental to the injunctive relief sought in Counts I through V, pursuant to ERISA sections 502(a)(1)(B) and 502(a)(3), 29 U.S.C. §§ 1132(a)(1)(B) and 1132(a)(3), Plaintiffs seek a Court order requiring Defendants to pay Plaintiffs and the Class, or in the alternative to pay Plaintiffs and all similarly situated Plan participants, additional benefits in the form of a common fund, to recover pension benefits due to them based on the violations of ERISA as set forth above.

G. Awarding Plaintiffs

1. their costs, disbursements and expenses herein;
2. reasonable attorneys' fees under the common fund doctrine or ERISA section 502(g); and

H. Awarding Plaintiffs and the Class, or alternatively all similarly situated Plan participants, such other and further relief as the Court may deem just, proper and equitable.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2009.

KELLER ROHRBACK L.L.P.

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