IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

PASCAL MAJON, an individual, on his own behalf and on behalf of all others similarly situated, Plaintiff, v. WASHINGTON MUTUAL BANK, HENDERSON, NEVADA, JPMORGAN CHASE BANK, N.A., Defendants.	Case No. 1:09-cv-05118 **CLASS ACTION COMPLAINT** **Jury Demanded**

Pascal Majon ("Majon" or "Plaintiff"), for his complaint, alleges as follows upon information and belief, based upon, *inter alia*, investigation conducted by his attorneys, except as to those allegations pertaining to Plaintiff and his counsel personally, which are alleged upon personal knowledge.

Introduction

1. This case is about Defendants Washington Mutual Bank ("WAMU") and JPMorgan Chase Bank, N.A.'s ("Chase") (collectively, "Defendants") fraudulent and illegal reduction of credit limits on home equity lines of credit ("HELOCs") across the country. In an attempt to limit their exposure to the risk of collapse in the United States housing market and rid themselves of less-profitable loans, Defendants have broken contractual promises to their HELOC account holders by reducing or freezing these customers' credit limits without first reasonably assessing the value of each affected property or otherwise having a sound factual basis for reducing or suspending the accounts.

2. Each member of the Class had a HELOC for which Defendants reduced the available credit in a manner that was illegal, fraudulent and unfair. As a result of Defendants' wrongful actions, Plaintiff Majon brings this class action on behalf of himself and the putative

Class and Subclass for actual damages and attorneys' fees under Regulation Z of the Truth-in-Lending Act (15 U.S.C. § 1640(a); 12 C.F.R. § 226.5b), damages for breach of contract, damages for breach of the implied covenant of good faith and fair dealing, damages, injunctive and equitable relief under the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1 *et seq.* (2000)), and equitable relief under principles of common law.

Nature of the Claim

3. As recently as January 2009, Defendants sent a form letter to Plaintiff and thousands of their other HELOC customers nationwide summarily suspending or reducing their lines of credit. The letter stated:

> With home values continuing to fall in many parts of the country, a recent review of your account identified a decline in the value of the property securing your HELOC since the date you applied for you HELOC or increase. Therefore, the account has been suspended from additional advances effective [insert date].

(See "Notice of HELOC Reduction," a true and accurate copy of which is attached as Exhibit A.)

4. The letter does not disclose the supposed present value of the property, the amount by which the property has supposedly decreased, or the methodology used to compute the decline in home value. Rather, on a second page for "Frequently Asked Questions" the letter states:

> Q: Why has my credit line been suspended?
>
> A: We've used a proven valuation method to estimate your home's value. Unfortunately, that valuation no longer supports the amount of your Line of Credit, so the account has been suspended from additional advances, as of the date of this letter.
> …
>
> Q: How did you obtain the value for my property?
>
> A: We use a standard method within the industry to obtain an updated value on the property.

(See Ex. A.)

5. Defendants lacked a sound factual basis for reducing or freezing their customers' HELOC credit limits. Defendants knowingly and intentionally used faulty and dubious automated formulas, with unreliable and inaccurate analyses, formulas, equations, and processes vulnerable to manipulation, including but not limited to Automated Valuation Models ("AVMs"), to unreasonably undervalue the homes so as to falsely trigger Defendants' rights to freeze or lower the credit limits. As a result, Defendants, in violation of federal law, reduced credit limits on HELOCs to many homeowners, including Plaintiff, whose property values had not declined significantly.

6. Defendants' intentional systematic, mass reduction on their customers' HELOCs and their intentional systematic concealment of the reasons for their action and their processes, standards and requirements for reducing limits, suspending accounts, and allowing re-instatement was and remains illegal. While federal law permits Defendants to reduce credit limits if an individual property securing a HELOC significantly declines in value, it violates federal law to reduce the credit limits of HELOC accounts due to insignificant declines in value, or without first assessing the value of the collateral that secures each affected HELOC account and having a sound factual basis for reducing or freezing HELOC credit limits.

7. Defendants' post-reduction handling, management and administration of customer complaints, inquiries and attempted appeals are likewise unfair and illegal. Defendants withhold and/or fail to provide, accurate necessary and material information, including but not limited to the valuation of the real property securing the HELOC at the time of HELOC origination or increase, the balance of any first mortgage at those times, the purported present value of the property to determine the extent of the purported decline, the value required for reinstatement, and/or the method used to determine these values. This information is material and needed by the customer in order to determine whether to appeal. Compounding this issue is the

Defendants' practice of requiring borrowers to pay appraisal fees upfront.

8. Defendants' HELOC reductions are not only fraudulent; they are patently unconscionable. On October 3, 2008, Congress passed the Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343. As part of this law, Defendants obtained, on information and belief, approximately $25 billion from an unprecedented $700 billion bailout funded entirely by American taxpayers. The rationale advanced for the bailout by its proponents was that the banks needed the money to ensure liquidity in the face of the worsening subprime mortgage disaster.

9. Despite Defendants' statements to Congress to the contrary, they have intentionally failed to meet their obligations to their customers and have intentionally deprived those customers of crucial affordable consumer credit at a critical time.

10. In stark contrast, Defendants' HELOC borrowers, like most American consumers, are struggling in a faltering economy, yet they continue to meet their mortgage obligations. These customers have incurred appraisal fees, an increased price of credit and reduced credit scores, lost interest and other damages.

Parties

11. **Plaintiff Pascal Majon:** Majon maintains his primary residence in Zion, Illinois (the "subject matter property"). In or about December 2005, Majon obtained a HELOC from WAMU in the amount of $27,000 to be secured by the subject matter property. Majon drew on the HELOC to help pay for home expenses. On or about May 22, 2008, Defendant WAMU caused a letter to be sent to Majon decreasing the credit limit on his HELOC to $23,900.00. Then, on or about January 9, 2009, following the acquisition of WAMU by Defendant Chase, Defendants sent Majon a letter indicating that they had suspended his HELOC account entirely.

12. **Defendant Washington Mutual Bank, Henderson, Nevada:** WAMU is a national banking association with its main office located at 2273 North Green Valley Parkway

Henderson, Nevada, 89014. On September 25, 2008, the United States Office of Thrift Supervision (OTS) seized WAMU from its holding company, Washington Mutual, Inc., and placed WAMU into the receivership of the Federal Deposit Insurance Corporation ("FDIC"). The FDIC sold the banking subsidiaries, minus unsecured debt or equity claims, to Chase for $1.9 billion. Chase specifically assumed "all mortgage servicing rights and obligations of" WAMU, including WAMU's HELOC accounts. (See "Purchase and Assumption Agreement," § 2.1 a true and accurate copy of which is attached as Exhibit B). WAMU is now operated as a subsidiary and/or division of co-Defendant Chase.

13. **Defendants JPMorgan Chase Bank, N.A.:** Chase is a national banking association with its main office located at 1111 Polaris Parkway Columbus, OH 43240. Under the Purchase and Assumption Agreement, Chase specifically assumed "all mortgage servicing rights and obligations of" WAMU, including WAMU's HELOC accounts. (See Ex. D., § 2.1.) Chase operates and/or controls WAMU as a subsidiary and/or division.

Jurisdiction and Venue

14. This Court has subject matter jurisdiction over this case under 28 U.S.C. § 1332(d)(2). This Complaint alleges claims on behalf of a national class of homeowners who are minimally diverse from Defendants. On information and belief, the aggregate of these claims exceeds the sum or value of $5,000,000. The Court also has federal question subject matter jurisdiction under 28 U.S.C. § 1331 as this action arises in part under Regulation Z of the Truth in Lending Act, 15 U.S.C. § 1647, 12 C.F.R. § 226.5b. The Court has supplemental subject matter jurisdiction over the pendent state law claims under 28 U.S.C. § 1367.

15. Plaintiff is a citizen of and resides in Zion, Illinois.

16. a. Defendant WAMU is a national banking association whose main offices are in Nevada, and is considered a citizen of Nevada for the purposes of diversity jurisdiction

under 28 U.S.C. § 1348 and *Wachovia Bank, N.A. v. Schmidt*, 546 U.S. 303 (2006).

b. Defendant Chase is a national banking association whose main offices are in Ohio, and is considered a citizen of Ohio for the purposes of diversity jurisdiction under 28 U.S.C. § 1348 and *Wachovia Bank, N.A.*, 546 U.S. 303 (2006).

17. Venue is also proper before this Court under 28 U.S.C. § 1391(b)(2) as a substantial part of the events, circumstances, and omissions giving rise to these claims occurred in this District. The Defendants each conduct significant lending and lending-related business in this district. Venue is also proper before this Court under 28 U.S.C. § 1391(c).

Allegations as to Plaintiff's Individual Claims

Majon's WAMU HELOC Account

18. In or about December 2005, Majon obtained a first mortgage in the amount of $216,000. Also at that time, Majon obtained a HELOC on the subject matter property through WAMU in the amount of $27,000. On information and Majon's home was valued at $269,500. Majon consistently made payments toward the principle balance on his first mortgage, reducing his balance to approximately $210,000. In May 2009, WAMU subsequently reduced Majon's credit limit to $23,900, but it was never disclosed to Majon what home value was used to justify that credit limit reduction.

The Freezing of Majon's HELOC

19. In late January, 2009, Mr. Majon received a letter dated January 9, 2009 from Defendants informing him that his HELOC had been suspended. (See Ex. A.).

21. The letter dated January 9, 2009, did not provide a supposed present value of Majon's home or the value Majon would need in order to obtain reinstatement. Rather, the letter indicated that in order to re-open his account, Majon would be required to enter into Defendants' appeals process, which included the payment of upfront fees for an appraisal of the subject

matter property by an appraiser chosen by Defendants. On information and belief, Majon's home value did not significantly decline, nor did the equity in his home decline so as to warrant the suspension of his HELOC account credit privileges. Furthermore, on information and belief, neither WAMU nor Chase had a sound factual basis prior to suspending Majon's credit privileges, but rather relied on automated valuation models that unreasonably failed to accurately assess the value of his home.

Class Certification Allegations

22. Plaintiff seeks certification of a class and one subclass under both Rule 23(b)(2) and Rule 23(b)(3).

23. **Definition of the Classes.** Pursuant to Federal Rule of Civil Procedure 23:

A. Majon brings this Complaint against Defendants on behalf of the "Class," consisting of:

> All persons in the United States who had a home equity line of credit reduced or suspended by Defendants WAMU and/or Chase because WAMU and/or Chase maintained without a sound factual basis that the reduction was due to a substantial decline in the value of the property securing the Account.

B. Majon also brings this Complaint against Defendants on behalf of a notice sub-class (the "Subclass") consisting of:

> All persons in the United States who received from WAMU and/or Chase the "Important Notice About Your Home Equity Line of Credit" and FAQ.

Excluded from the Class and Subclass are 1) any Judge or Magistrate presiding over this action and members of their families; 2) Defendants, Defendants' subsidiaries, parents, successors, predecessors, and any entity in which the Defendants or their parents have a controlling interest and their current or former employees, officers and directors; 3) persons who properly execute and file a timely request for exclusion from the class; and 4) the legal representatives, successors or assigns of any such excluded persons. Plaintiff anticipates that amending the Class and

Subclass definitions may become necessary following discovery.

24. **Numerosity:** The exact number of the members of the Class and Subclass is unknown and is not available to Majon, but it is clear that individual joinder is impracticable. Defendants sent their generic credit line reduction letters to thousands of mortgagees, and a substantial percentage of the recipients of these letters fall into the definition of the Class and Subclass. Class Members can be easily identified through Defendants' records and through public records.

25. **Commonality:** Common questions of fact and law exist as to all members of the Class and Subclass and predominate over the questions affecting only individual members. These common questions include:

(a) What were Defendants' criteria for reducing the credit limits on their HELOCs;

(b) What were Defendants' methods for valuing the homes securing the HELOCs, which credit limits they reduced;

(c) Whether Defendants had a sound factual basis for reducing HELOC limits based on significant declines in home values;

(d) Whether Defendants' criteria for reducing HELOC credit limits, methods for valuing homes securing HELOCs, and ultimate reduction of HELOC credit limits violated Regulation Z;

(e) Whether Defendants' reduction of the credit limits breached the terms of their HELOCs;

(f) Whether Defendants' HELOC agreement terms imposed contractual obligations on Defendants to have a sound factual basis before lowering HELOC limits due to a supposed significant decline in value;

(g) Whether Defendants' reduction of the credit limits on their HELOCs was unfair

and unlawful;

(h) Whether Defendants gave lawful and fair notice to customers that their HELOCs were being reduced and the specific reasons for such reductions;

(i) Whether Defendants' conduct constitutes immoral, unethical, or unscrupulous business practices under the Illinois Consumer Fraud and Deceptive Business Practices Act or constitutes common law fraud; and

(j) Whether Majon and the Class are entitled to relief, and the nature of such relief.

26. **Typicality:** Majon's claims are typical of the claims of the other members of the Class and Subclass, as Majon and the other members sustained damages arising out of Defendants' wrongful conduct, based upon the same transactions which were made uniformly with Majon and the public. The Illinois and federal laws under which Majon's claims arise do not conflict with the laws of any other state in any material way.

27. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the members of the Class and Subclass, and has retained counsel competent and experienced in complex class actions. Plaintiff has no interests antagonistic to those of the Class or the Subclass and Defendants have no defenses unique to Plaintiff.

28. **Predominance and Superiority:** This class action is appropriate for certification because class proceedings are superior to all other available methods for the fair and efficient adjudication of this controversy, and because joinder of all members is impracticable. The damages suffered by the individual members of the Class and Subclass will likely be relatively small, especially given the burden and expense of individual prosecution of the complex litigation necessitated by Defendants' actions. It would be virtually impossible for the individual members of the Class to obtain effective relief from Defendants' misconduct. Even if members of the Class themselves could sustain such individual litigation, it would still not be preferable to

a class action, because individual litigation would increase the delay and expense to all parties due to the complex legal and factual controversies presented in this Complaint. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court. Economies of time, effort, and expense will also be fostered and uniformity of decisions will be ensured.

29. **Policies Generally Applicable to the Class:** This class action is also appropriate for certification because Defendants have acted or refused to act on grounds generally applicable to the Class and Subclass, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole. Defendants' policies challenged herein apply to and affect members of the Class uniformly, and Plaintiff's challenge of these policies hinges on Defendants' conduct, not on facts or law applicable only to Plaintiff.

Count I: Declaratory Relief Under TILA and Regulation Z
(On Behalf of Majon and the Class Against WAMU and Chase)

30. Plaintiff incorporates the foregoing allegations by reference as if fully set forth herein.

31. The Truth-in-Lending Act ("TILA") and its implementing regulation (Regulation Z) prohibit Defendants from changing any of the terms of a mortgage or HELOC – including the credit limit. 15 U.S.C. § 1647(c)(1); 12 C.F.R. § 226.5b(f)(3). There is an exception under TILA and Regulation Z for "any period in which the value of the consumer's principal dwelling which secures any outstanding balance is significantly less than the original appraisal value of the dwelling," which permits Defendants to reduce the credit limits on their HELOCs. 15 U.S.C. § 1647(c)(2)(B); 12 C.F.R. § 226.5b(f)(3)(vi)(A). TILA and Regulation Z prohibit Defendants from suspending accounts or reducing the credit limits on their HELOCs unless the value of the

home securing the credit line has actually declined significantly. "Significant decline" for purposes of § 226.5b(f)(3)(vi)(A) has been interpreted as a decline in home value so that "the initial difference between the credit limit and the available equity (based on the property's appraised value . . .) is reduced by fifty percent." The Official Staff Commentary further states that Regulation Z "does not require a creditor to obtain an appraisal before suspending credit privileges [but] a significant decline must occur before suspension can occur." On August 26, 2008, the Office of Thrift Supervision issued official guidance that warned it would violate Regulation Z to "reduce the credit limits of all HELOC accounts in a geographic area in which real estate values are generally declining without assessing the value of the collateral that secures each affected HELOC account." (Emphasis in original).

Reducing HELOCs without first having a sound factual basis

32. Before reducing the limits of their HELOCs, Defendants had an obligation to have a sound factual basis for concluding that the value of the homes had actually declined significantly. Plaintiff alleges on information and belief that, instead, Defendants knowingly and intentionally used a variety of dubious computer models, formulas and unreliable data to falsely devalue their HELOC account holders' homes as pretext in order to justify the blanket credit limit reductions and HELOC account suspensions. On information and belief, Defendants' methodology was flawed in that Defendants failed to, among other acts or omissions: (1) validate the models on a periodic basis to mitigate the potential valuation uncertainty, (2) properly document the validation's analysis, assumptions, and conclusions, (3) appropriately back-test representative samples of the valuations against market data on actual sales, (4) account fairly for improvements, property type or geographic comparables, (5) take other necessary steps to reasonably verify the accuracy of the valuations.

Failure to provide critical information regarding reduction and reinstatement

33. Plaintiff and the other members of the Class have additionally been harmed because Defendants knowingly failed to disclose information that would permit Plaintiff and the Class members to fairly determine whether to obtain an appraisal or otherwise challenge Defendants' action, including but not limited to:

a. how Defendants determined or defined "decline in value;"

b. how Defendants computed the value of the properties;

c. the appraised value Defendants required a customers' property to have and their methods for computing that value, so that they would reinstate or unfreeze the HELOCs;

d. the Defendants' actual and specific reasons for the reduction of the HELOCs;

e. the process, procedures, and guidelines pursuant to which Defendants implemented their reduction /cancellation of the HELOCs; and

f. other necessary information.

Unlawfully shifting the burden of investigating whether the condition persists onto the borrowers

34. Compounding Defendant's failure to provide such basic information, and providing further disincentive for borrowers to challenge its decisions, is Defendant's practice and policy of requiring Plaintiff and the other Class members to perform the investigation into whether the condition permitting the reduction in the first place continues to exist by requiring the borrowers to obtain and pay upfront for property appraisals as part of its "appeals process." TILA and Regulation Z provide that the burden of reinstating HELOC accounts and credit limits rests with the lender. *See* Commentary to 12 C.F.R. 226.5b(f)(3)(vi)(2). Although TILA and Regulation Z permit lenders such as Chase to transfer the burden of seeking reimbursement onto

HELOC borrowers, TILA and Regulation Z dictate that once a borrower requests reinstatement, the lender must then investigate the circumstances that purportedly warranted suspension or reduction. *See* Commentary to 12 C.F.R. 226.5b(f)(3)(vi)(4). Only after the lender investigates may the lender charge the borrower bona fide and reasonable costs and appraisal fees. *See* Commentary to 12 C.F.R. 226.5b(f)(3)(vi)(3). On information and belief, Defendant intentionally shifted onto its customers the burden of investigating the facts by requiring borrowers to obtain and pay *upfront* for property appraisals. This is done in an effort to discourage customers from seeking reinstatement of their original credit limits, and this illegal burden shift is particularly successful in discouraging customers from seeking reinstatement when combined with Defendant's failure to provide specific information to Plaintiff and Class members that would have helped them assess the utility of obtaining an appraisal and seeking reinstatement.

35. The Class and Defendants have adverse legal interests, and there is a substantial controversy between the Class and Defendants of sufficient immediacy and reality to warrant the issuance of a declaratory judgment as to whether Defendants' mass reduction of credit limits violates TILA and Regulation Z.

36. Majon, on his own behalf and on behalf of the other Class members, seeks a declaratory judgment under 27 U.S.C. § 2201 that Defendants' mass reduction of HELOC credit limits in connection with their letter violates TILA and Regulation Z.

Count II: Violation of TILA and Regulation Z
(On Behalf of Majon and the Class Against WAMU and Chase)

37. Plaintiff incorporates the foregoing allegations by reference as if fully set forth herein.

38. Defendants knowingly lacked a sufficient factual basis for reducing and/or

suspending Plaintiff and the Class's credit limits or prohibiting additional extensions of credit. Defendants lacked a sound factual basis for concluding the homes securing the HELOCs for Majon and the other Class members had declined in value so as to support reducing and/or suspending the credit limits or prohibiting additional extensions of credit. Defendants further withheld critical information needed by customers and unfairly

39. Defendants' reduction and/or suspension of the credit limits for Majon and the other Class members' HELOCs violated TILA and Regulation Z.

40. Defendants' violations of TILA and Regulation Z damaged Majon and the other Class members. These damages occurred in the form of the increased price of credit, appraisal fees, adverse effects on credit scores, loss of interest, and other damages.

41. Majon, on his own behalf and on behalf of the other Class members, seeks actual damages under 15 U.S.C. § 1640(a)(1), statutory damages under 15 U.S.C. § 1640(a)(2) (B), and costs of the action, together with reasonable attorneys' fees under 15 U.S.C. § 1640(a)(3).

Count III: Violation of TILA and Regulation Z
(On Behalf of Majon and the Subclass Against WAMU and Chase)

42. Plaintiff incorporates the foregoing allegations by reference as if fully set forth herein.

43. Where a creditor prohibits additional extensions of credit or reduces the credit limit, "the creditor shall mail or deliver written notice of the action to each consumer who will be affected. The notice must be provided not later than three business days after the action is taken and shall contain specific reasons for the action." Regulation Z, 12 C.F.R. § 226.9(c)(3).

44. On information and belief, the notices of HELOC reductions Defendants provided to Plaintiff and the members of the Class were untimely and/or did not contain specific reasons for the action in violation of 12 C.F.R. § 226.9(c)(3).

45. The Notices fail to provide HELOC customers with enough information to determine whether they should spend the time and resources to challenge the Defendant's decisions. Despite the Notice's own recognition that the customers' HELOC agreements and federal law requires a "significant decline in collateral value" prior to prohibiting additional extensions of credit or reducing the credit limit, the Notices are devoid of any specific reasoning beyond there being a general "decline in value" based on a "proven" and "standard method within the industry." The Notices do not reveal how Defendants determined or defined "decline in value," how Defendants compute the value of the subject matter homes, the threshold value a customer needs to have an appraisal state the property is worth (and Defendants' methods for computing that value) so that they will reinstate or unfreeze the HELOCs. Customer service is likewise unable and unwilling to provide this information to customers upon request, or provide inconsistent and incorrect information, thereby rendering any appeals process illusory.

46. Majon, on his own behalf and on behalf of the other Notice Subclass members, seeks actual damages under 15 U.S.C. § 1640(a)(1), statutory damages under 15 U.S.C. § 1640(a)(2) (B), and costs of the action, together with reasonable attorneys' fees under 15 U.S.C. § 1640(a)(3).

Count IV: Breach of Contract
(On Behalf of Majon and the Class Against WAMU and Chase)

47. Plaintiff incorporates the foregoing allegations by reference as if fully set forth herein.

48. Majon and the other Class members obtained HELOCs from Defendants. The terms of these HELOCs constitute a contract between the Class members and Defendants.

49. The HELOCs contain a term that allows Defendants to reduce the credit limit if the value of the home securing the HELOC "declines significantly." Defendants drafted the

HELOCs, and the phrase "declines significantly" should be construed against Defendants.

50. Majon and the other Class members made all payments due to Defendants and otherwise fully performed under their HELOCs with Defendants.

51. The credit limit under the Class members' HELOCs was a material term of the contract between Class members and Defendants.

52. Defendants materially breached the terms of the HELOCs by reducing or suspending the credit lines for Majon and the other Class members' HELOCs where no significant decline in value had first occurred.

53. As a result, Majon and the other Class members have suffered damages in the form of appraisal fees, the increased price of credit, lost interest, attorneys' fees, adverse effects on their credit scores, and other damages.

54. Majon, on his own behalf and on behalf of the other Class members, seeks damages for Defendants' breach of contract, as well as interest, attorneys' fees and costs in an amount to be determined at trial.

Count V: Breach of Implied Covenants
(On Behalf of Majon and the Class and Subclass Against WAMU and Chase)

55. Plaintiff incorporates the foregoing allegations by reference as if fully set forth herein.

56. Majon and the other Class members obtained HELOCs from Defendants. The terms of these HELOCs constitute contracts between the Class members and Defendants.

Good Faith and Fair Dealing

57. Implicit in the HELOC agreements were contract provisions that prevented Defendants from engaging in conduct that frustrates the Class members' rights to the benefits of the contract or that would injure the Class members' rights to receive the benefits of their

HELOCs. Likewise, if not explicitly stated, implicit in the HELOC agreements were contract terms that required Defendants to comply with TILA and Regulation Z.

58. The credit limit was a material term of the Class members' HELOCs. Defendants breached the implied covenant of good faith and fair dealing in the HELOCs by reducing and/or suspending the credit lines for Majon and the other Class members' HELOCs without first having a sound factual basis for claiming there was a decline in value.

59. Defendants further breached the implied covenant of good faith and fair dealing as to the Subclass by failing to provide sufficiently specific notice and by failing to provide customers with material information regarding the calculations and values used to justify the reductions or freezes. Defendants' intentional withholding of crucial information, constituted violations of both TILA and Regulation Z.

60. Defendants also breached the covenant of good faith and fair dealing by placing the burden of obtaining and paying for appraisals upfront upon Class members, rather than requiring a request for reinstatement from the borrower, then performing their own investigation and only charging those bona fide fees so incurred. Upon information and belief, Defendants' shifting of the investigation burden onto borrowers, and deprivation of critical information, was an intentional contravention of TILA and Regulation Z specifically designed to discourage borrowers from seeking reinstatement. Defendants' actions in this regard constituted a breach of the covenant of good faith and fair dealing, as they were designed to frustrate the Class members' rights to receive the full benefits of their HELOC agreements.

61. Defendants' breach of the implied covenant of good faith and fair dealing and their violations of TILA and Regulation Z caused Majon and the other Class members to incur damages in the form of appraisal fees, the increased price of credit, adverse effects on their credit scores and other damages.

62. Majon, on his own behalf and on behalf of the other Class and Subclass members, seeks damages for Defendants' breach of the implied covenant of good faith and fair dealing, as well as interest, attorneys' fees and costs in an amount to be determined at trial.

Count VI: Violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/2)
(On Behalf of Majon and the Class Against WAMU and Chase)

63. Plaintiff incorporates the foregoing allegations by reference as if fully set forth herein.

64. Defendants' wrongful acts, as set forth throughout this Complaint, constitute unfair methods of competition, deceptive business practices, misrepresentation, and concealment, suppression or omission of material facts with the intent that consumers will rely on the concealment, and suppression or omission of the material facts in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act. 815 ILCS 505/2 *et. seq*. ("Consumer Fraud Act").

65. Defendants' unlawful acts have occurred in commerce and have caused serious and irreparable injury to Plaintiff and the Class and, unless restrained by the Court, will continue to cause further injury.

66. Defendants' statements regarding the availability of credit through the HELOCs were false and likely to deceive a reasonable consumer. Further, Defendants' statements as to their potential bases for reducing credit limits – including that any potential future reduction of credit through the HELOCs would only occur through a substantial decline in property value – were false and likely to deceive a reasonable consumer.

67. Defendants' conduct was deceptive and untrue, as the AVM models it utilized to determine the values of the subject properties of the Class members securing the HELOCs were, on information and belief, without a sound factual basis and were inaccurate and unsubstantiated so as to make their use unfair, deceptive, and readily subject to manipulation. Upon information and belief, Defendants intentionally utilized faulty and unreliable AVM models in order to minimize the property values of their customers and provide a false and misleading basis for reducing credit limits. These unfair, immoral and unscrupulous acts and practices constitute deceptive and unfair business practices in violation of the Illinois Consumer Fraud Act.

68. Defendants' conduct was also deceptive and unfair because Defendants deprived borrowers of critical information needed to determine whether to seek credit line reinstatement, including Defendants' valuation of the subject property and the value required for reinstatement. Defendants' conduct was further unfair, immoral and unscrupulous because it shifted the burden of seeking investigating, and paying for an appraisal upfront, to borrowers in contravention of TILA and Regulation Z. Upon information and belief, Defendants' shifting of the investigation burden onto borrowers, and deprivation of critical information, was an intentional contravention of TILA and Regulation Z specifically designed to discourage borrowers from seeking reinstatement or otherwise challenging the banks' decisions.

69. As a direct and proximate result of Defendants' deceptive, unfair, unscrupulous and unconscionable practices set forth above, Plaintiff and the Class suffered are entitled to actual and compensatory damages, penalties, attorneys' fees, and costs as set forth in §10(a) of the Illinois Consumer Fraud Act, 815 ILCS 505/10(a), in an amount to be determined at trial.

Count VII: Common Law Fraud
(On Behalf of Majon and the Class and Subclass Against WAMU and Chase)

70. Plaintiff incorporates the foregoing allegations by reference as if fully set forth

herein.

71. In late January 2009, Defendants mailed or otherwise caused their letter entitled "IMPORTANT NOTICE ABOUT YOUR HOME EQUITY LINE OF CREDIT" to be sent to Plaintiff Majon. (See Ex. A.)

72. This letter stated, in part:

> With home values continuing to fall in many parts of the country, a recent review of your account identified a decline in the value of the property securing your HELOC since the date you applied for your HELOC or increase. Therefore, the account has been suspended from additional advances effective ___, 2009.
>
> ***
>
> This reduction was not based on your payment record and results exclusively from a change in property value.
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> ***
>
> Q: Why has my credit line been suspended?
> A: We've used a proven valuation method to estimate your home's value. Unfortunately, that valuation no longer supports the amount of your Line of Credit, so the account has been suspended from additional advances, as of the date of this letter.
>
> ***
>
> Q: How did you obtain the value for my property?
> A: We use a standard method within the industry to obtain an updated value on the property.

(See Ex. A.)

73. The above representations were false, and the Defendants knew them to be false.

74. The statement that "a recent review of your account identified a decline in the value of the property securing your HELOC since the date you applied for your HELOC or increase" affirmatively represents that Plaintiff's property, and specifically the value of that property, was reviewed in relation to the property valuation at the time of the application of the HELOC or HELOC increase. On information and belief, no such valuation of Plaintiff's specific

property took place.

75. The statement that "[t]his reduction was not based on your payment record and results exclusively from a change in property value" affirmatively represents that Defendants based their action of suspending Plaintiff's HELOC upon a change in property value. On information and belief, no such basis existed in fact, and the claimed basis was pretextual, and not based upon a change in property value.

76. The statement that "[w]e've used a proven valuation method to estimate your home's value" affirmatively represents that Defendants actually undertook a valuation of Plaintiff's specific property utilizing a method that would accurately assess the valuation of that property. On information and belief, no proven valuation method was utilized by Defendants.

77. The statement that "[w]e use a standard method within the industry to obtain an updated value on the property" affirmatively represents that Defendants actually undertook a valuation of Plaintiff's specific property utilizing a standard method in the industry that would accurately assess the valuation of that property. On information and belief, no such reasonably accurate valuation was undertaken, and no standard method utilized in the industry was used by Defendants, nor was an updated value actually obtained by Defendants.

78. At the time the above-identified false statements were made by Defendants in the "IMPORTANT NOTICE ABOUT YOUR HOME EQUITY LINE OF CREDIT" letter, Defendants knew the above-identified statements were false.

79. Defendants made such false statements in order to create a false pretext to enable Defendants to suspend or terminate their HELOC obligations to Plaintiff. Defendants intended that Plaintiff rely upon the false statements so that Defendants would not be contractually obligated to provide any further credit to Plaintiff.

80. Reliance was unilaterally imposed upon Plaintiff by Defendants. When

Defendants unilaterally suspended or terminated their HELOC obligations through the making of the false representations identified above, Defendants changed the terms and obligations they owed to Plaintiff pursuant to the HELOC it had negotiated with him.

81. Plaintiff was given no opportunity or choice not to rely upon the Defendants' action, because Defendants unilaterally changed the terms and obligations of Plaintiff's HELOC.

82. The changes in the terms and obligations under the HELOC imposed by Defendants' fraudulent actions resulted in a loss of credit that Plaintiff had previously bargained for and that Defendants had committed to provide based upon the security provided by the valuation of Plaintiff's home. The loss of credit resulted in real and significant monetary damage to Plaintiff.

83. Each member of the Class received a letter from Defendants containing identical statements. The letter was a form letter, and the identical language was incorporated into each letter.

84. For each member of the Class, the statements were identically false, and identically false for the same reasons.

85. In each case, the false statements made by Defendants to the members of the Class were known by Defendants to be false when they were made.

86. In each case, Defendants intended that the members of the Class to whom the false statements made would rely on the false statements as a pretext to enable Defendants to suspend or terminate their HELOC obligations to the members of the Class.

87. In each case, Defendants imposed reliance upon each of the members of the Class when Defendants unilaterally suspended or terminated their HELOC obligations to the members of the Class through the making of the false representations identified above. In each case, Defendants changed the terms and obligations they owed to the members of the Class pursuant to

the HELOCs they had negotiated with them.

88. No members of the Class were given an opportunity or choice not to rely upon the Defendants' actions, because Defendants unilaterally changed the terms and obligations owed to the members of the Class pursuant to the HELOCs.

89. The changes in the terms and obligations owed by Defendants to the members of the Class pursuant to their HELOCs with Class members resulted in a loss of credit that the Class members had previously bargained for and that Defendants had committed to provide based upon the security provided by the valuation of the Class members' homes. The loss of credit resulted in real and significant monetary damage to the members of the Class.

90. In addition, Plaintiff and the Class members reasonably and justifiably relied on Defendants' false representations to their detriment by ordering otherwise unnecessary appraisals of their homes that ultimately showed that the home values had actually increased or had not declined significantly to justify the freezing of the customers' HELOC accounts or the reduction of their credit limits.

91. As an actual and proximate result of this justifiable reliance on Defendants' misrepresentations of their home values, Plaintiff and the Class members have sustained direct and consequential monetary damages in the form of appraisal fees and other fees.

92. Majon, on his own behalf and on behalf of the other Class members, seeks an order enjoining Defendants' fraudulent misrepresentations, actual and consequential damages sustained as a result of these misrepresentations, as well as interest, attorneys' fees and costs in an amount to be determined at trial.

Count VIII: Unjust Enrichment/Restitution
(On Behalf of Majon and the Class)
(In the Alternative to Breach of Contract Claims)

93. Plaintiff incorporates paragraphs 1-46 and 55-92 by reference as if fully set forth

herein.

94. In the alternative, and in the event the Court finds that no contract provision expressly governs the issues raised herein, or that Defendants have not breached the terms of their HELOC contracts, Defendants have knowingly received and retained benefits from Plaintiff and the Class under circumstances that would render it unjust to allow Defendants to retain such benefits.

95. By utilizing inaccurate and unsubstantiated valuation models that did not provide particularized and accurate valuations of the properties of each Class member, and by requiring Plaintiff and the Class members to obtain and pay upfront for appraisals in order to seek reinstatement of their HELOCs, Defendants knowingly received and appreciated the benefits of up-to-date full appraisals on properties in which they have security interests. Such appraisals are more accurate than the AVM models Defendants utilize, and it would be unjust for Defendants to obtain and keep the benefit of the updated, accurate appraisals without bearing the cost of such appraisals.

96. Additionally, Defendants have been unjustly enriched by retaining money that should otherwise have been provided to customers as part of their HELOCs. Defendants unlawfully and inappropriately reduced or froze the credit limits of the Class members, thus allowing Defendants to utilize monies for their own purposes rather than for extending credit to Class members as previously promised. It is unjust to allow Defendants to keep such a benefit in light of their actions in violation of TILA and Regulation Z and in light of the significant harm their action caused the Class members and the economy, as a whole.

97. Additionally, Plaintiff and the Class members have conferred a benefit upon Defendants by paying Annual Fees to Defendants for use of their HELOCs. Defendants' receipt and retention, in full, of the Annual Fees is unfair and unjust in light of their unjust and illegal

reduction or freezing of the HELOC accounts of Plaintiff and the Class members and denying them the full bargained-for use of the HELOC accounts.

98. Defendants have been unjustly enriched by failing to refund, and continuing to assess, an Annual Fee despite illegally reducing and/or suspending the HELOC accounts of Plaintiff and the Class members and preventing the full use of those HELOC accounts.

99. As an actual and proximate result of their actions, Defendants have received and retained a benefit at the expense and to the detriment of Plaintiff and the Class members in the form of appraisal fees, the value of the credit unlawfully not extended to the Class members, and collected Annual Fees.

100. Plaintiff and the Class members seek damages and disgorgement of all revenue and profit gained through Defendants' unjust enrichment, plus interest and attorneys' fees, in an amount to be determined at trial. Plaintiff and the Class members also seek punitive damages, as Defendants' actions were willful, deceptive, and made in bad faith.

WHEREFORE, Plaintiff Pascal Majon, on his own behalf and on behalf of the Class, prays that the Court enter judgment and orders in his favor and against Defendants as follows:

(a) Certifying the action as a class action and designating Plaintiff and his counsel as representatives of the Class and Subclass;

(b) Declaring under 27 U.S.C. § 2201 on Count I that Defendants' HELOC reductions violate federal law;

(c) Awarding statutory damages under 15 U.S.C. § 1640(a)(2)(B) for Count II;

(d) Awarding actual damages for the Subclass on Counts III, V, and VII, including but not limited to appraisal fees, the increased price of credit, NSF fees, attorneys' fees, interest and other damages in an amount to be proved at trial;

(e) Awarding Actual damages for the Class on Counts I, II, III, IV, V, VI and VII

including but not limited to appraisal fees, the increased price of credit, NSF fees, attorneys' fees, interest and other damages in an amount to be determined at trial;

(f) Granting equitable and injunctive relief for the Class, including restitution of property gained by the unfair competition alleged herein, and an order for accounting of such property;

(g) Granting equitable and injunctive relief for the Subclass, including restitution of property gained by the unfair competition alleged herein, and an order for accounting of such property;

(h) Awarding pre- and post-judgment interest; and

(i) Granting such other and further relief as the Court may deem equitable and just.

JURY TRIAL DEMAND

Plaintiff hereby requests a trial by jury of all issues so triable.

Dated: August 20, 2009

PASCAL MAJON, individually and on behalf of a class of similarly situated individuals.

By: /s/ Jay Edelson
One of Mr. Majon's Attorneys

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