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CONCISE SUMMARY OF THE CASE

Pursuant to 3<sup>rd</sup> Cir. LAR 33.3, counsel are required to file a concise summary of the case within 10 days of the date of docketing of the Notice of Appeal. **An original and one (1) copy are required.** Total statement is limited to no more than 2 pages, single-spaced. Counsel may utilize this form or attach a 2 page statement encompassing the information required by this form.

SHORT  
CAPTION: Francis J. Puleo, et al. v. Chase Bank USA, N.A.  
USCA NO.: 08-3837

LOWER COURT or AGENCY and DOCKET NUMBER:  
E.D. Pa. No. 2-07-cv-04800

NAME OF  
JUDGE: The Hon. Lawrence F. Stengel

Specify who is suing whom, for what, and the subject of this action. Identify (1) the nature of the action; (2) the parties to this appeal; (3) the amount in controversy or other relief involved; and (4) the judgment or other action in the lower court or agency from which this action is taken:

Plaintiffs-Appellants Francis J. Puleo and Trish C. Puleo, on behalf of themselves and all Pennsylvania residents similarly situated, sued Defendant-Appellee Chase Bank USA, N.A. for unlawfully imposing retroactive interest rate increases on incurred credit card debt during months when their accounts went into default. Plaintiffs allege that this practice violates Pennsylvania's Unfair Trade Practices and Consumer Protection Law, breaches the implied covenant of good faith and fair dealing in their credit card agreements, and imposes an unlawful penalty.

Plaintiffs-Appellants seek monetary damages. In response to a motion for remand of this diversity action to state court, Defendant-Appellee submitted evidence showing that the amount in controversy in this action is in excess of \$5 million.

Plaintiffs-Appellants appeal from an order dismissing their claims. LIST and ATTACH a copy of each order, judgment, decision or opinion which is involved in this appeal. If the order(s) or opinion(s) being appealed adopt, affirm, or otherwise refer to the report and recommendation of a magistrate judge or the decision of a bankruptcy judge, the report and recommendation or decision shall also be attached.

08-13-08 Order of District Court, which dismissed Plaintiffs-Appellants' claims, compelled Plaintiffs-Appellants to arbitrate, and prohibited Plaintiffs-Appellants from proceeding on a class action basis in arbitration. This Order is attached.

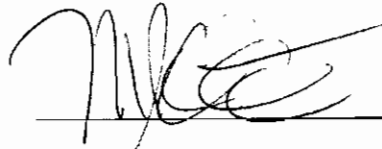
CONCISE SUMMARY OF THE CASE (cont.)

Provide a short statement of the factual and procedural background which you consider important to this appeal:

After Plaintiffs-Appellants withdrew their motion for remand, Defendant-Appellee moved to compel arbitration and dismiss their claims. Defendant-Appellee also as requested in this motion that the District Court prohibit Plaintiffs-Appellants from proceeding on a class action basis in arbitration. Plaintiffs-Appellants acquiesced to the motion to the extent it sought arbitration, but argued that the District Court should not rule on class action issues and instead should allow an arbitrator to decide the parties' dispute over whether an express class action waiver in Defendant-Appellee's mandatory arbitration clause is enforceable. The District Court granted Defendant-Appellee's motion in full.  
Identify the issues to be raised on appeal.

- (1) Under the Federal Arbitration Act, whether a court or an arbitrator determines the validity of an express class action waiver where an arbitration clause is written broadly to cover all possible disputes between the parties, including disputes concerning the arbitration clause itself.
- (2) If Plaintiffs-Appellants do not prevail on question (1) and the Court holds that the validity of a class action waiver must be determined by a court, then whether the district court erred in holding that Defendant-Appellee's class action waiver is enforceable.

This is to certify that this Concise Summary of the Case was mailed to the Clerk of the U.S. Court of Appeals for the Third Circuit and a copy hereof served to each party or their counsel of record this 17<sup>th</sup> day of September, 2008.



(Signature of Counsel)

REV. 04/00  
REV. 02/06  
Rev. 05/07

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>FRANCIS J. PULEO and TRISH</b>	:	<b>CIVIL ACTION</b>
<b>C. PULEO, on behalf of themselves</b>	:	
<b>and all other Pennsylvania residents</b>	:	
<b>similarly situated,</b>	:	
<b>Plaintiffs</b>	:	
	:	
<b>v.</b>	:	<b>NO. 07-4800</b>
	:	
<b>CHASE BANK USA, N.A.</b>	:	
<b>Defendant</b>	:	

**ORDER**

**STENGEL, J.**

**AND NOW**, this 12<sup>th</sup> day of August, 2008, upon consideration of defendant's Motion to Compel Arbitration and Dismiss this Action (Document #19), plaintiffs' Response to Motion to Compel Arbitration (Document #22) and defendant's Reply in further Support of its Motion to Compel Arbitration (Document #23), it is hereby

**ORDERED** that the motion is **GRANTED**.<sup>1</sup>

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<sup>1</sup> Plaintiffs support the defendant's motion to the extent that it seeks arbitration and dismissal of their claims in court, but oppose the motion to the extent that it asks the court to prohibit them from proceeding on a class action basis. Plaintiffs are asking the court to grant defendant's motion by compelling the parties to arbitrate all of their claims, including their claims challenging the validity of the contract provision barring class action proceedings in arbitration.

The Cardmember Agreements contained the following "separate identifier" in capital letters at the beginning of the Cardmember Agreements notifying plaintiffs of the class action waiver:

PLEASE READ THIS AGREEMENT CAREFULLY. IT PROVIDES THAT ANY DISPUTE MAY BE RESOLVED BY BINDING ARBITRATION. ARBITRATION REPLACES THE RIGHT TO GO TO COURT. YOU WILL NOT BE ABLE TO BRING A CLASS ACTION OR OTHER REPRESENTATIVE ACTION IN COURT SUCH AS THAT IN THE FORM OF A PRIVATE ATTORNEY GENERAL ACTION, NOR WILL YOU BE ABLE TO BRING ANY CLAIM IN ARBITRATION AS A CLASS ACTION OR OTHER REPRESENTATIVE ACTION.

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The agreement further explains:

If a party elects to arbitrate a Claim, the arbitration will be conducted as an individual action. Neither you nor we agree to any arbitration on a class or representative basis, and the arbitrator shall have no authority to proceed on such basis. This means that even if a class action lawsuit or other representative action, such as that in the form of a private attorney general action, is filed, any Claim between us related to the issues raised in such lawsuits will be subject to an individual arbitration claim if either you or we so elect.

(Chase Cardmember Agreement).

Plaintiffs are challenging the validity of the arbitration clause's express class action prohibition. They claim that the language of the arbitration clause contains sweeping language concerning its coverage, defining arbitrable claims to include all "claims based on law, statute, contract, regulation, ordinance, tort, common law, constitutional provision, or any legal theory of law." (Chase Cardmember Agreement). Defendant further clarified that the term "claim" is to be given the broadest possible meaning. Plaintiffs argue that the contract's class action ban falls within the broad scope of the arbitration clause making it an issue for the arbitrator to decide, not the court. In support of their position, plaintiffs rely upon Green Tree Fin. Corp. v. Bazzle, 539 U.S. 444 (2003), which held that when an arbitration agreement is silent regarding class actions, it is a question for the arbitrator whether or not to permit them.

Defendant maintains that the court, rather than the arbitrator, must determine the validity of the arbitration agreement terms. They argue that as a matter of federal law the express class action waiver is not unconscionable and that this case should be sent to the arbitrator on an individual basis per Gay v. CreditInform, 511 F.3d 369, 394-95 (3d Cir. 2007).

The contract before this court is distinguishable from the one in Bazzle, because here the clause prohibiting class arbitration is clear: the contract expressly and unequivocally forbids class actions. There is no need for anyone to interpret or decide whether the contract does or does not permit class arbitration. The contract here is more analogous to Gay and does not mandate this court to defer to the arbitrator's interpretation of the agreement since it expressly forbids class arbitration.

A gateway dispute about whether the parties are bound by a given arbitration clause raises a "question of arbitrability" for a court to decide. Howsam v. Dean Witter Reynolds, Inc., 537 U.S. 79, 84 (2002). Similarly, a disagreement about whether an arbitration clause in a concededly binding arbitration clause applies to a particular type of controversy is for the court. Id. The decision of whether the parties must abide by the binding arbitration and waiver of class action clause is a gateway dispute for the court to decide. The parties' express class action waiver clause is valid, enforceable and not unconscionable. Gay, 511 F. 3d at 394-95. See, e.g. Gibson v. Cross Country Bank, 354 F. Supp. 2d 1278 (M.D. Ala. 2005)(holding that the validity and enforceability of an express class action waiver clause in an arbitration agreement was an issue to be determined by the court and was not unconscionable); Iberia Credit Bureau, Inc. v. Cingular Wireless LLC, 379 F. 3d 159, 174-75 (5th Cir. 2004) (upholding the validity of an express class action waiver alleged to be unconscionable under Louisiana law); Carter v. Countrywide Credit Indus., Inc., 362 F. 3d 294, 301 (5th Cir. 2004) (rejecting the argument that the arbitration clause prohibiting plaintiffs from proceeding collectively was unconscionable under Texas law); Livingston v. Assocs. Fin., Inc., 339 F.3d 553, 559 (7th Cir. 2003) (holding that "the Arbitration

The Clerk of Court is directed to mark this case closed for statistical purposes.

BY THE COURT:

/s/ Lawrence F. Stengel  
LAWRENCE F. STENGEL, J.

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Agreement at issue here explicitly precludes the Livingstons from bringing class claims or pursuing 'class action arbitration,' so we are therefore obliged to enforce the type of arbitration to which these parties agreed, which does not include arbitration on a class basis"). The claims here are subject to arbitration on an individual basis and the arbitration clause is not unconscionable.