

# Exhibit C

Robert C. Brierley ID # 44632-039  
McKean Federal Correctional Institution  
P.O. Box 8000 - Bradford, Pa. 16701

October 25th, 2014

**In The Matter of the Application of U.S. Bank National Association, et. al.** Index #  
652382/2014, Article 77 Proceeding

### **Opposition to the Proposed Settlement**

I am respectfully submitting these objections to yet another settlement whereby JP Morgan pays money to buy its way out of criminal liability. I am currently a federal prisoner, imprisoned because I supposedly tricked JP Morgan Chase into making mortgage loans, case # 2:11-cr-20018-JAC-MKM-1, USA v. Robert Brierley. I am currently paying restitution to JP Morgan Chase on the following properties:

- 10570 Cedar Valley Drive, Davisburg, Michigan
- 2663 Ore Valley Drive, Heartland, Michigan
- 8316 Joy Road, Plymouth, Michigan

I have not been able to obtain the lender files at issue in my criminal case concerning the three properties listed above. I would like to submit a motion to vacate restitution in my criminal case based upon JP Morgan's wrongdoing. I am objecting to this settlement until:

- (1) I am provided with the three lender files concerning the loans listed above; and
- (2) The bond pool owning those loans is identified; and
- (3) Any recovery by bondholders concerning the loans listed above should be credited to my restitution.

Since JP Morgan Chase is now paying bondholders that own these loans, I believe that further restitution from me to JP Morgan is not lawful.

#### **Summary of Recent Admissions of Wrongdoing by JP Morgan Chase**

On November 19, 2013, JP Morgan Chase paid \$13 billion and reached a settlement with the Justice Department in which the bank admitted knowingly making mortgage loans that did not meet its underwriting guidelines and then lying about that practice when reselling loans.

According to the JP Morgan's November 19, 2013 Statement of Facts:

"Delinquent loans ... were securitized" ( p. 10-11)

JP Morgan closed loans when the bank "concluded borrowers overstated their incomes" (P. 4).

JP Morgan closed loans with "missing appraisals" and when other "material documents were missing from the loan files" (p. 4-6).

JP Morgan utilized "bulk waivers" and did not review mortgage loans on a "case-by-case basis."

On February 6, 2014, JP Morgan paid a \$614 million fine for defrauding the FHA lending program, case # 13-civ-0220, S.D. NY, Judge J. Paul Oetken. According to the settlement in that case, JP Morgan knowingly disregarded its lending guidelines and knowingly approved thousands of FHA and VA loans even though the bank knew such loans did not meet its lending guidelines. And when JP Morgan performed internal reviews of loans and found that hundreds of its loans failed to meet guidelines, the bank never informed the FHA. Then, JP Morgan lied to FHA, falsely claiming in annual certifications that its loans met guidelines. According to Mr. Preet Bharara, United States Attorney for the Southern District of New York:

**JP Morgan put profits ahead of responsibility by recklessly churning out thousands of defective loans, failing to inform the government of known problems with those loans and leaving the government to cover losses when loans defaulted. (emphasis added, [www.doj.gov](http://www.doj.gov), 2/6/14).**

Admissions that JP Morgan knowingly ignored lending guidelines and knowingly solicited fraudulent loans defeat a key element of any wire or bank fraud offense: the element of "materiality" Neder v. United States, 527 U.S.1, 25 (1999). Dozens of innocent people are in jail for supposedly tricking JP Morgan into making loans that did not meet the bank's guidelines. At a minimum, I am asking that JP Morgan inform me if any of their admissions of wrongdoing concern the loans at issue in my criminal case.

**JP Morgan is not a "Victim" and Should Not Receive Restitution**

The admissions by JP Morgan discussed above prove that JP Morgan is currently being unjustly enriched by receipt of restitution from me and other indigent federal prisoners. The Mandatory Victims Restitution Act (18 U.S.C. 3663) authorizes courts to order "the defendant to make restitution to the victim." Pursuant to United States v. Hunter, 618 F.3d 1062, 1064 (9th Cir., 2010):

**The purpose of restitution under the MVRA ... is not to punish the defendant, but to make the victim whole again by restoring to him or her the value of the losses suffered as a result of the defendant's crime. (Alterations and internal quotations omitted).**

Recovery to victims is limited to those parties "directly and proximately harmed as a

result of the commission of the offense," United States v. Donaby, 349 F.3d 1046, 1052 (7th Cir., 2003). Participation in fraudulent behavior by entities or individuals makes those entities or individuals ineligible to receive restitution; corporations that enter into agreements with the Justice Department and pay large monetary fines for committing fraud cannot be considered victims of their own wrongdoing, In Re Wellcare, 2014 U.S. App. LEXIS 11086, 11th Circuit No 14-12422-B, 6/13/14. Also see United States v. Lazar, 770 F. Supp. 2d 447 (District Court, Mass, 2011). Pursuant to United States v. Ojeikere, 545 F.3d 220, 223 (2nd Cir., 2008), citing United States v. Martinez, 978 F. Supp. 1442, 1453 (D.N.M., 1997):

**It is intuitively obvious that Congress did not intend to have the federal judiciary take the lead in rewarding, through restitution orders, persons robbed of monies they had obtained by unlawful means, especially where as a matter of policy, federal courts generally would not award those monies were they sought in a civil action. This is especially true when the person who has benefitted has violated federal laws.**

The Second, Ninth, Eleventh and D.C. Circuits have all addressed this very issue and have made clear that entities guilty of wrongdoing -- namely, JP Morgan Chase -- are not "victims" and may not receive restitution:

**Any order entered under the MVRA that has the effect of treating coconspirators as 'victims' and thereby requires 'restitutionary' payments to the perpetrators of the offense of conviction, contains an error so fundamental and so adversely reflecting on the public reputation of the judicial proceedings that we may, and do, deal with it sua sponte, United States v. Reifler, 446 F.3d 65, 127 (2nd Cir., 2006).**

JP Morgan's failure to alert state and federal courts that it will no longer accept restitution from so-called "mortgage fraud" defendants constitutes a fraud on the court, United States v. Lazarenko, 624 F.3d 1247, 1249 (9th Cir., 2010) (collecting cases). Moreover, no court in New York has jurisdiction to issue any order that has the effect of awarding restitution in an amount in excess of any losses a victim suffered -- but this settlement would do just that, contrary to United States v. Pescatore, 637 F.3d 128, 138-140 (2nd Cir., 2011).

**WHEREFORE**, I am respectfully requesting that This Most Honorable Court grant the following relief:

- (1) That I be informed which bond trustee owns each of the loans itemized above and that I be given copies of the lender's files concerning these properties;
- (2) That this settlement be stopped until such time as JP Morgan and the bond trustees inform me how many dollars should be credited towards my restitution as a part of this settlement;
- (3) That any admissions of wrongdoing by JP Morgan that relate to the properties listed above be provided to me;
- (4) That the actions of JP Morgan Chase General Counsel Stephen Cutler be referred to the appropriate ethical body to determine if Mr. Cutler has a duty of "Candor Toward the Tribunal" and if Mr. Cutler has a duty to alert the district court overseeing my case that further restitution

by me to JP Morgan is inappropriate. and

(5) Any other relief deemed just and equitable by This Most Honorable Court.

Thank you very much for considering this pleading.

Respectfully Submitted,

---

Robert C. Brierley ID # 44632-039  
McKean Federal Correctional Institution  
P.O. Box 8000 - Bradford, Pa. 16701

**Certificate of Service**

I, Robert Brierley, Pro Se, respectfully state that I caused the following parties to be served with these objections, via regular U.S. Mail, postage prepaid on October 25th, 2014:

**Bank of New York Mellon Trust Company**

c/o The Bank of New York Mellon  
101 Barclay Street, 8 West  
New York, New York 10286  
Attention: Loretta Lundberg

with a copy to:

Nandini Mami  
Senior Managing Counsel  
Bank of New York Mellon  
One Wall Street  
New York, New York 10286

and

**Deutsche Bank National Trust Company**

1761 East St. Andrew Place  
Santa Ana, CA 92705  
Attention: Rolando Reyes

with a copy to:

John M. Rosenthal  
Morgan, Lewis & Bockius, LLP  
One Market  
Spear Street Tower  
San Francisco, CA 94105

**HSBC Bank, National Association**

Corporate Trust & Loan Agency  
8 East 40th Street  
New York, New York 10016  
c/o Thomas Mackay

with a copy to:

Jean-Marie L. Atamian  
Mayer Brown LLP  
1675 Broadway  
New York, New York 10019

**Law Debenture Trust Company of New York,  
as separate Trustee**

40 Madison Avenue  
4th Floor  
New York, New York 10017  
Attention: Thomas Musarra

with a copy to:

Seward & Kissel LLP  
One Battery Park Plaza  
New York, New York 10004  
c/o Dale Cristensen

**U.S. Bank National Association**  
190 S. LaSalle Street  
Chicago, IL 60603  
Attention Nicholas Valaperta

with a copy to:  
Matthew Martel  
Jones Day  
100 High Street, 21st floor  
Boston, Massachusetts 02110

Ms. Mary Sohlberg  
**Wells Fargo Bank National Association**  
Sixth Street & Marquette Avenue  
Mail Station N9311-161  
Minneapolis, MN 55479

with a copy to  
Stephen Mertz  
Faegre Baker Daniels  
2200 Wells Fargo Center  
90 S 7th Street  
Minneapolis, MN 55402

Ms. Jennifer Luce  
**Wilmington Trust, National Association**  
Rodney Square, North  
1100 North Market Street  
Wilmington, Delaware

with a copy to:  
Jason Solomom  
Alston & Bird LLP  
90 Park Avenue  
New York, NY 10016

and a copy has also been forwarded to JP Morgan Chase:

**JP Morgan Chase**  
c/o Stacey Feldman  
383 Madison Avenue  
6th Floor  
Mail Code NY1-M040  
New York, NY 10179

with a copy to:  
Robert Sacks  
Sullivan & Cromwell LLP  
1888 Century Park East  
Los Angeles, CA 90067

and a courtesy copy has been served upon:

Kathy Patrick  
**Institutional Investors**  
Gibbs & Bruns LLP  
1100 Louisiana  
Suite 5300  
Houston, Texas 77002

Respectfully Submitted,

---

Robert C. Brierley