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JAMES CROUSE,	*	IN THE
Plaintiff,	*	CIRCUIT COURT
v.	*	FOR
FIRST NATIONAL BANK OF PENNSYLVANIA,	*	BALTIMORE COUNTY
	*	Case No.: C-03-CV-24-000522
Defendant.	*	

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DEFENDANT'S REPLY IN FURTHER SUPPORT OF MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT IN ITS ENTIRETY OR, IN THE ALTERNATIVE, MOTION TO DISMISS CLASS ALLEGATIONS

Defendant, First National Bank of Pennsylvania, successor by merger to Howard Bank, successor by merger to First Mariner Bank ("Defendant" or "1st Mariner"), respectfully submits this Reply in Further Support of its Motion to Dismiss Plaintiff's Amended Complaint or, in the Alternative, Motion to Dismiss Class Allegations ("Motion").

I. INTRODUCTION

Plaintiff James Crouse ("Crouse") argues that the Supreme Court's holding in *China Agritech v. Resh*, 584 U.S. 732 (2018), is limited to cases in which the class in the prior action was either decertified or not certified to begin with. As explained below, however, Crouse's arguments fail to save his class claims from dismissal. Indeed, *China Agritech* prohibits precisely what Crouse is seeking to do here—namely, pursuing claims on behalf of a class of claimants, whose claims would otherwise be time-barred, by "piggyback[ing] on an earlier, timely filed class action." 584 U.S. at 740. Neither common sense nor legal authority supports Crouse's effort to restrict

arbitrarily *China Agritech*'s reach in the manner he proposes. Accordingly, the Court should strike or dismiss Crouse's class allegations in their entirety before this case proceeds any further.[1]

II. REPLY ARGUMENT

In *China Agritech*, the Supreme Court squarely held that the class action tolling principles of *American Pipe & Construction Co. v. Utah*, 414 U.S. 538 (1974), do not permit a plaintiff, such as Crouse here, seeking to represent a class of claimants, whose claims would otherwise be time-barred, to "piggyback on an earlier, timely filed class action."[2] 584 U.S. at 740. Apparently acknowledging that the reasoning of *China Agritech* would bar his class claims here, Crouse argues that the Supreme Court's holding is limited to situations in which the court in the prior action either denied class certification outright or decertified a previously certified class. Opp. at 9-11. But Crouse cites no case law supporting such an arbitrarily narrow reading of *China Agritech*, and in fact, several courts have expressly rejected comparable efforts to restrict *China Agritech*'s reach. *See, e.g.*, *In re Celexa & Lexapro Marketing & Sales Practices Litig.*, 915 F.3d 1, 16 (1st Cir. 2019) (holding that, in *China Agritech*, the Supreme Court "effectively ruled that the tolling effect

[1] 1st Mariner submits this Reply in support of its request to dismiss Plaintiff's class allegations. It remains 1st Mariner's primary position, however, that the Court should dismiss Plaintiff's Complaint in its entirety because Plaintiff lacks standing.

[2] *Crouse* expressly relies on the class action tolling doctrine articulated in *American Pipe* and its progeny in his Complaint to maintain that that "[t]he filing of the *Bezek* action [in 2017] tolled, and continues to toll, the statute of limitations applicable to Plaintiff Crouse's RESPA claims[.]" *See* Am. Compl. at ¶ 113. *China Agritech* – the case on which 1st Mariner largely relies in support of its argument for dismissal of class claims – is a limit on the "*American Pipe* tolling." *See* 584 U.S. at 736 ("*American Pipe* does not permit the maintenance of a follow-on class action past expiration of the statute of limitations.").

of a motion to certify a class applies only to individual claims, no matter how the motion is ultimately resolved").

For example, in *Ochoa v. Pershing LLC*, the named plaintiff was removed from a prior class when the representative plaintiffs in the first action amended their complaint to narrow the class definition. No. 3:16-CV-1485-N, 2021 WL 5163196, at *1 (N.D. Tex. Nov. 5, 2021). In dismissing the plaintiff's class claims, the court observed that "[s]econdary, or follow-on, class litigation may arise for one of several reasons not involving an outright denial of class certification," such as the amendment of a complaint or a district court's partial class certification. *Id.* at *3. The court reasoned that the policies behind *China Agritech* – judicial economy and preventing nearly endless re-litigation – are applicable, regardless of how the class certification motion in the prior action is resolved. The court concluded that *China Agritech* applies to "any attempt to bring a follow-on class action, regardless of whether denial [of certification] has occurred in the original action or not." *Id.* (emphasis in original). Thus, the court ruled that the plaintiffs "may not rely on *American Pipe* tolling of the limitations period applicable to their claims." *Id.* at *4. This Court should reach the same conclusion for the same reason.

Likewise, the Northern District of Illinois rejected a similar effort to confine *China Agritech*'s reach to cases in which the prior class was either decertified or never certified. In *Practice Management Support Servs., Inc. v. Cirque du Soleil Inc.*, the named plaintiff was a former member of two putative classes – one in a federal action that was dismissed before class certification, the other in a subsequently filed state action that was dismissed on *res judicata* grounds before the court addressed certification. No. 14 C 2032, 2018 WL 3659349, at *1-*2 (N.D. Ill. Aug. 2, 2018). In rejecting the plaintiff's proposed narrow view of *China Agritech* (which is essentially the same view Crouse advances here), the court explained:

> It is true that the *China Agritech* Court framed the "question presented" early in its opinion as: "Upon denial of class certification, may a putative class member, in lieu of promptly joining an existing suit or promptly filing an individual action, commence a class action anew beyond the time allowed by the applicable statute of limitations?" But the Court purported to resolve . . . a broader question: "whether otherwise-untimely successive class claims may be salvaged by *American Pipe* tolling." And the Supreme Court repeatedly stated its holding in clear terms that were in no way qualified based on how the prior class action lawsuit was resolved

Id. at *4 (citations omitted; second emphasis added); *see also Torres v. Wells Fargo Bank*, No. CV179305DMGRAOX, 2018 WL 6137126, at *3 (C.D. Cal. Aug. 28, 2018) (granting Wells Fargo's motion to strike class allegations and rejecting plaintiffs' argument that *China Agritech* was inapplicable because no class certification decision was ever made in prior class action).

Here, Crouse ceased to be a member of the *Bezek* class on December 13, 2023, when the Court redefined the class definition. As the above cases illustrate, the specific context of the Court's ruling is immaterial to whether *China Agritech* applies to preclude Crouse (or any former *Bezek* class member) from pursuing otherwise untimely successive class action. There is no doctrinal reason for treating Crouse's putative class claims differently depending on how Crouse ceased to be a member of the *Bezek* class. All that matters is that Crouse was, but no longer is, a member of the *Bezek* class; under *American Pipe*, his individual claims were tolled, but under *China Agritech*, the successive class claims he seeks to pursue here were not tolled. Crouse cites no cases in support of his narrow view of *China Agritech*, and research reveals none.[3] Further, Crouse offers no coherent explanation for why this Court should arbitrarily limit the application of *China Agritech* in the manner he seeks. Nor can he. In *China Agritech*, the Supreme Court "effectively ruled that the tolling effect of a motion to certify a class applies only to individual

[3] While Crouse is correct that the Fourth Circuit has only had the occasion to apply *China Agritech* in cases where a prior alleged class was denied certification or was decertified, he fails to cite to cases from any jurisdiction in which a court has declined to extend *China Agritech* to circumstances where a class was redefined.

claims, no matter how the motion is ultimately resolved." *In re Celexa & Lexapro Marketing & Sales Practices Litig.*, 915 F.3d at 16. Accordingly, the Court should dismiss or strike Crouse's class allegations.

III. CONCLUSION

For the foregoing reasons and the reasons set forth in 1st Mariner's Motion, 1st Mariner respectfully requests that this Court grant its Motion to Dismiss Plaintiff's Amended Complaint or, in the Alternative, Motion to Dismiss Class Allegations.

Dated: November 14, 2024

Respectfully submitted,

/s/ Peter W. Sheehan, Jr.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of November, 2024, copies of Defendant First National Bank of Pennsylvania's Reply in Further Support of Motion to Dismiss Plaintiff's Amended Complaint in its Entirety or, in the Alternative, Motion to Dismiss Class Allegations were served electronically via MDEC on:

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