

EXHIBIT 1

Unofficial Copy Office of Marilyn Pugh District Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARK J. EPLEY AND
ELIZABETH EPLEY
Plaintiff,

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V.

CIVIL ACTION NO. 4:24-CV-_____
(Harris County Cause No. 2024-58112)

JPMORGAN CHASE BANK, N.A. and
JOHN DOE DEFENDANT,
Defendants

JPMORGAN CHASE BANK’S NOTICE OF REMOVAL

Defendant, JPMorgan Chase Bank, N.A. (“Chase”), by counsel, removes this civil action from the 157TH District Court of Harris County, Texas to the United States District Court for the Southern District of Texas pursuant to 28 U.S.C. §§1332, 1441 and 1446. As more fully explained herein, removal is proper because this Court has subject matter jurisdiction over this action under 28 U.S.C. §1332, and all requirements of removal have been satisfied. The grounds for removal are as follows:

1. This action originally commenced in the 157th District Court of Harris County, Texas on or about August 30, 2024, and is now pending in that court. Pursuant to LR81, all papers and matters filed in the state court are attached hereto as Exhibit A.

- Exhibit A-1:** Harris County District Court’s Detail Report
- Exhibit A-2:** Plaintiffs, Mark J. Epley and Elizabeth Epley’s, Original Petition
- Exhibit A-3:** Service on Chase
- Exhibit A-4:** Chase’s Original Answer
- Exhibit A-5:** State Court Docket Sheet

A list of all counsel of record is attached as **Exhibit B**. The index to Chase's Notice of Removal being filed is attached as **Exhibit C**.

2. Chase was served via CT Corporation Systems on September 3, 2024. See **Exhibit A-3**.

3. This Notice of Removal is timely under 28 U.S.C. §1446(b) because the same was filed within thirty (30) days after receipt of the initial pleading setting forth the claim for relief upon which the proceeding is based. Further, this Notice of Removal is filed within one year of the commencement of this action.

4. A Notice of Filing of Notice of Removal will be filed promptly with the District Clerk of the District Court of Harris County, Texas.

5. A copy of the Notice of Filing Notice of Removal will also be served upon counsel for the Plaintiffs, together with a copy of this Notice of Removal, contemporaneously with filing the same with the District Clerk of the District Court of Harris County, Texas.

The Requirements for Diversity Jurisdiction are Satisfied:

6. Jurisdiction is vested in this Court pursuant to 28 U.S.C. §1332, as there is complete diversity of citizenship between the parties. Plaintiffs, Mark J. Epley and Elizabeth Epley (collectively "Plaintiffs"), are individuals who reside in the State of Connecticut. Chase is a national banking association organized and existing under the laws of the United States, with its main office in Columbus, Ohio. For purposes of diversity jurisdiction, a national banking association is a citizen of the state designated in its articles of association as the location of its main office. 28 U.S.C. §1332(c); *Wachovia Bank, N.A. v. Daniel G. Schmidt, III*, 546 U.S. 303, 318 (2006); *Crear v. JP Morgan Chase Bank, N.A.*, No. 10-10875, 2011 WL 1129574, at *2, n.12 (5th Cir. Jan. 23, 2011); *Salas v. Wells Fargo Bank, N.A.*, No. 1:19-cv-167, 2019 WL 5269180, at

*2 (S.D. Tex. Sept. 13, 2019). Because Chase’s articles of association indicate the main office is in Columbus, Ohio, Chase is a citizen of Ohio for diversity purposes. Likewise, because Plaintiffs reside in the State of Connecticut, they are citizens of Connecticut for diversity purposes.

7. Pursuant to 28 U.S.C. § 1441(b)(1), “the citizenship of defendants sued under fictitious names shall be disregarded.” See *Weaver v. Metropolitan Life Ins. Co.*, 939 F.3d 618 (5th Cir. 2019). John Doe is a fictitious name that may not be considered for purposes of determining whether complete diversity exist between the parties. See *Shoffeitt v. Wal-Mart Stores Tex., LLC, Store No. 0595*, No. 1:19-cv-156, 2019 WL 7584313, at *2 (S.D. Tex. Dec. 30, 2019).

8. The amount in controversy also exceeds \$75,000. Removal is proper if it is apparent from the face of the petition that the claims are likely to exceed \$75,000. *Theodoridis v. Balboa Ins. Co.*, No. G-10-497, 2011 WL 13257650, at *1 (S.D. Tex. Feb. 3, 2011). In its Original Petition, Plaintiffs state that they are seeking to recover “over \$1,000,000.00” See **Exhibit A-2**, p. 1, ¶ 2. More specifically, Plaintiffs seek reimbursement of an allegedly fraudulent wire transfer in the amount of \$4,905,000.00 as well as an award for punitive damages and exemplary damages, and attorneys’ fees and costs. See **Exhibit A-2**, p. 2, ¶¶ 8-9 and p. 10. Thus, it is apparent from the face of the petition that the amount in controversy is sufficient to establish the diversity jurisdiction of this Court. See U.S.C. §1446(c)(2); *Bates v. Laminack*, 938 F. Supp. 2d 649, 655 (Tex. App. 2013); *Whitmire v. Bank One, N.A.*, 2005 WL 3465726, at *3–4 (S.D. Tex. Dec. 16, 2005) (finding that economic damages of just \$15,370.50, treble damages, and attorney’s fees, revealed an amount in controversy over \$75,000).

9. Venue is proper in this Court because this District and Division encompass the District Court of Harris County, Texas, the forum from which the case has been removed. See U.S.C. §1441.

10. This Court has original jurisdiction of this civil action because there is complete diversity of citizenship between the parties, and the amount in controversy exceeds \$75,000. *See* 28 U.S.C. §1332. Consequently, this action is removable to this Court.

WHEREFORE, Defendant, JPMorgan Chase Bank, N.A., submits that this matter is properly removed from the District Court of Harris County, Texas to this Court.

Respectfully submitted on this 2nd day of October, 2024.

STEPTOE & JOHNSON PLLC

By: /s/ Jason R. Grill

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The Woodlands, Texas 77380

281.203.5700

*Attorneys for Defendant, JPMorgan Chase Bank,
N.A.*

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of October, 2024, Chase's Notice of Removal was served on counsel listed below:

Via Email

William P. Huttenbach

CRAIN, CATON & JAMES, P.C.

1401 McKinney, Suite 1700

Houston, Texas 77010

whuttenbach@craincaton.com

*Attorney for Plaintiffs, Mark J. Epley
and Elizabeth Epley*

/s/ Jason R. Grill

Jason R. Grill

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Mark J. Epley and Elizabeth Epley

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) William P. Huttenbach, Crain, Caton & James, 1401 McKinney, Suite 1700, Houston, TX 77010

DEFENDANTS

JPMorgan Chase Bank, N.A. and John Doe Defendant

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) Jason R. Grill, Steptoe & Johnson PLLC, 1780 Hughes Landing Boulevard, Suite 750, The Woodlands, TX 77380

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, INTELLECTUAL PROPERTY RIGHTS, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes sub-sections like PERSONAL INJURY, PERSONAL INJURY, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, LABOR, IMMIGRATION, INTELLECTUAL PROPERTY RIGHTS, SOCIAL SECURITY, FEDERAL TAX SUITS.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): §§ 1332, 1441 and 1446. Brief description of cause: Breach of UCC presentment warranty

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 4,905,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 10/02/2024 SIGNATURE OF ATTORNEY OF RECORD /s/ Jason R Grill

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

EXHIBIT A

Unofficial Copy Office of Marilyn Burgess District Clerk

EXHIBIT A-1

Unofficial Copy Office of Marilyn Burgess District Clerk

Chronological Case History

Style	EPLEY, MARK vs. JPMORGAN CHASE BANK NA				
Case Number	202458112	Case Status	Active - Civil	Case Type	OTHER CIVIL
File Court	157	File Date	8/30/2024	Next Setting	10/16/2024

Date	Type	Description
8/30/2024	ACTIVITY	BENCH HEARING ASSIGNED COURT: 157
8/30/2024	ACTIVITY	EVIDENCE PRESENTED (BENCH HEARING) COURT: 157
8/30/2024	ACTIVITY	APPEARANCE ON TEMPORARY INJ OR TEMPORARY RESTRAINING ORD COURT: 157
8/30/2024	ACTIVITY	HEARING HELD FOR ANOTHER COURT COURT: 157
8/30/2024	DOCUMENT	ORIGINAL PETITION COURT: 157 ATTORNEY: HUTTENBACH, WILLIAM PATTERSON PERSON FILING: EPLEY, MARK
8/30/2024	DOCUMENT	ORIGINAL PETITION COURT: 157 ATTORNEY: HUTTENBACH, WILLIAM PATTERSON PERSON FILING: EPLEY, ELIZABETH
8/30/2024	ORDER	ORDER SIGNED SETTING HEARING COURT: 157 PGS. 3
8/30/2024	ORDER	ORDER SETTING BOND SIGNED COURT: 157 PGS. 3
8/30/2024	ORDER	ORDER SIGNED GRANTING TEMPORARY RESTRAINING ORDER COURT: 157 PGS. 3
9/3/2024 12:00:00 AM	SERVICE	PERSON SERVED: JPMORGAN CHASE BANK N A SERVICE TYPE: CITATION
9/3/2024 12:00:00 AM	SERVICE	PERSON SERVED: JPMORGAN CHASE BANK N A SERVICE TYPE: TEMPORARY RESTRAINING ORDER
9/11/2024	ORDER	ORDER SIGNED SETTING HEARING COURT: 157 PGS. 2
9/11/2024	ORDER	ORDER EXTENDING TEMPORARY RESTRAINING ORDER SIGNED COURT: 157 PGS. 2
9/30/2024	DOCUMENT	ANSWER ORIGINAL PETITION COURT: 157 ATTORNEY: GRILL, JASON REYNOLDS PERSON FILING: JPMORGAN CHASE BANK NA

Unofficial Copy Office of Marilyn Burgess District Clerk

EXHIBIT A-2

Unofficial Copy Office of Marilyn Burgess District Clerk

CAUSE NO. _____

MARK J. EPLEY AND
ELIZABETH EPLEY

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IN THE DISTRICT COURT OF

V.

HARRIS COUNTY, TEXAS

JPMORGAN CHASE BANK, N.A. and
JOHN DOE DEFENDANT

_____ JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL PETITION AND APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND TEMPORARY INJUNCTION**

Plaintiffs, Mark J. Epley and Elizabeth Epley (“**Plaintiffs**”), file this Original Petition and Application for Temporary Restraining Order and Temporary Injunction against Defendant, JPMorgan Chase Bank, N.A. (“**Defendant**” or “**Chase Bank**”), and unknown John Doe Defendant (collectively referred to herein as “**Defendants**”) and would respectfully show unto the Court as follows:

DISCOVERY CONTROL PLAN

1. Pursuant to Texas Rule of Civil Procedure 190.3, Plaintiffs intend to conduct discovery under Level 2 of Texas Rules of Civil Procedure and affirmatively pleads that this suit is not governed by the expedited actions process in Texas Rule of Civil Procedure 169 because Plaintiffs seek non-monetary relief. *See* Tex. R. Civ. P. 190.2, 169.

CLAIM FOR RELIEF

2. In accordance with Texas Rule of Civil Procedure 47(c), Plaintiffs seek monetary relief over \$1,000,000.00. The damages sought are within the jurisdictional limits of the Court.

PARTIES

- 3. Plaintiff Mark J. Epley is an individual residing in Connecticut.
- 4. Plaintiff Elizabeth Epley is an individual residing in Connecticut.

5. Chase Bank is a national banking association doing business in Harris County, Texas, and may be served through its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136, or wherever it may be found.

6. John Doe Defendant is an unknown individual named pursuant to Tex. Civ. Prac. & Rem. Code § 16.0045(d).

JURISDICTION AND VENUE

7. This Court has jurisdiction over this matter because the damages sought are within the jurisdictional limits of the Court. Venue is proper in this Court because Defendant, Chase Bank, does business in Harris County and/or all or a substantial part of the events giving rise to claim may have occurred in Harris County, Texas.¹ See Tex. Civ. Prac. & Rem. Code § 15.002(a).

FACTS

8. Plaintiffs are currently in the process of purchasing a house and was scheduled to close on August 29, 2024. Plaintiffs received wiring instructions from an individual purporting to work with their real estate agent on or about August 22, 2024.² On information and belief, Plaintiffs were defrauded by John Doe Defendant into making the wire transfer and learned of the scam after the wire transfer was completed. Pursuant to John Doe Defendant's instructions, Plaintiffs completed a wire transfer to John Doe Defendant's account with Chase Bank in the approximate amount of \$4,905,000.00. Plaintiffs thought they were paying funds to be able to complete the real estate transaction, but Plaintiffs' real estate agent's assistant said the funds had not been received.

9. The funds had been sent to an account at Chase Bank. Upon learning of the scam, Plaintiffs contacted Chase Bank to demand the return of the funds. Despite demand, Chase Bank

¹ Factual investigation is still ongoing in this case. To the extent that the acts or omissions did not occur in Texas, this lawsuit may need to be transferred to another jurisdiction. Plaintiffs are filing this lawsuit without knowing all the facts to try to immediately freeze funds stolen through bank fraud.

² See Exhibit A, a true and correct copy of the affidavit of Elizabeth Epley.

has not yet returned the funds. Chase Bank's failure to return the funds has caused Plaintiffs to suffer injury. Plaintiffs file this lawsuit to try to immediately freeze the funds and prevent any further funds from being transferred or withdrawn from the fraudster's account at Chase Bank.

CAUSES OF ACTION

Money Had and Received as to All Defendants

10. Plaintiffs adopt and incorporate by reference the foregoing paragraphs above as if fully stated herein. Defendants are liable for claims for money had and received. The only thing that needs to be proved in a claim for money had and received "is that defendant holds money which in equity and good conscience belongs to [the plaintiff]" *London v. London*, 192 S.W.3d 6, 13 (Tex. App.—Houston [14th Dist.] 2005, pet. denied) (quoting *Staats v. Miller*, 243 S.W.2d 686, 687–88 (1951)). Money had and received "is an equitable doctrine that courts apply to prevent unjust enrichment." *Id.* (citing *Miller-Rogaska, Inc. v. Bank One*, 931 S.W.2d 655, 662 (Tex. App.—Dallas 1996, no writ)). "The cause of action is not premised on wrongdoing, but looks to the justice of the case and inquires whether the party has received money that rightfully belongs to another." *Id.* (citing *Amoco Prod. Co. v. Smith*, 946 S.W.2d 162, 164 (Tex. App.—El Paso 1997, no writ)). Here, Chase Bank and/or John Doe Defendant hold or held money, which in equity and good conscience belongs to Plaintiffs.

11. Several courts have held that claims for money had and received were recoverable where payment was made based on mistake, fraud, or in other similar circumstances. Indeed, Texas courts have allowed restitution for these types of claims in a variety of cases:

[B]y a defrauded party against the party who committed the fraud, *see Staats*, 243 S.W.2d at 686–88; *Wiseman v. Baylor*, 6 S.W. 743, 743–44 (Tex. 1887); by a party that made an overpayment, *Benson v. Travelers Ins. Co.*, 464 S.W.2d 709, 710–13 (Tex. Civ. App.—Dallas 1971, no writ); and by a party that paid or credited money to the wrong person or account, *see Amoco Prod. Co.*, 946 S.W.2d at 163–65 (payment to wrong person); *Doss v. Homecomings Fin. Network, Inc.*, 210 S.W.3d 706, 710–11 (Tex. App.—Corpus Christi 2006, pet. denied) (payment applied to

wrong account); *Lyman D. Robinson Family Ltd. P'ship v. McWilliams & Thompson, P.L.L.C.*, 143 S.W.3d 518, 520 (Tex. App.—Dallas 2004, pet. denied) (earnest money released to wrong client).

Edwards v. Mid-Continent Office Distribs., L.P., 252 S.W.3d 833, 837–38 (Tex. App.—Dallas 2008, pet. denied).

12. In *Benson* for example, the court explained, “It has been stated as a rule of law that if payments were made because of a serious mistake of fact by the insurer, it is entitled to restitution unless it has agreed to assume the risk of mistake or there is some reason which makes it inequitable or inexpedient for restitution to be granted.” *Benson v. Travelers Ins. Co.*, 464 S.W.2d 709, 712–13 (Tex. App.—Dallas 1971, no writ) (“Numerous cases throughout the United States are cited in support of this general principle of law.”). Accordingly, the court held that the plaintiff was entitled to recover on its claim for overpayment by mistake, even though the mistake was unilateral and not induced by fraud, imposition, undue influence or betrayal of confidence. *Id.* at 710–13.

13. Defendants received the wired funds, and those funds in the amount of \$4,905,000.00 rightfully belong to Plaintiffs in equity and good conscience.

Unjust Enrichment as to All Defendants

14. Plaintiffs adopt and incorporate by reference the foregoing paragraphs above as if fully stated herein. Defendants are being unjustly enriched from money that rightfully belongs to Plaintiffs through the wire transfer in dispute. The doctrine of unjust enrichment applies to address such a situation. A party may recover under an unjust enrichment theory when one person has obtained a benefit from another by fraud, duress, or the taking of an undue advantage. *See Pope v. Garrett*, 211 S.W.2d 559, 560 (Tex. 1948); *Austin v. Duval*, 735 S.W.2d 647, 649 (Tex. App.—Austin 1987, writ denied).

15. Unjust enrichment is a cause of action based upon the result of a failure to make restitution of benefits either wrongfully or passively received under circumstances that give rise to an implied or quasi-contractual obligation to repay.” *Friberg-Cooper Water Supply Corp. v. Elledge*, 197 S.W.3d 826, 832 (Tex. App.—Fort Worth 2006, pet. filed) (quoting *Walker v. Cotter Props., Inc.*, 181 S.W.3d 895, 900 (Tex. App.—Dallas 2006, no pet.)), *rev’d on other grounds*, 240 S.W.3d 869 (Tex. 2007); *Mowbray v. Avery*, 76 S.W.3d 663, 679 (Tex. App.—Corpus Christi 2002, pet. denied); *see Best Buy Co. v. Barrera*, 214 S.W.3d 66, 73 (Tex. App.—Corpus Christi 2006, pet. filed), *rev’d on other grounds*, 248 S.W.3d 160 (Tex. 2007). Unjust enrichment occurs when a person wrongfully secured a benefit or has passively received one which it would be unconscionable to retain. *Tex. Integrated Conveyor Sys., Inc. v. Innovative Conveyor Concepts, Inc.*, 300 S.W.3d 348, 367 (Tex. App.—Dallas 2009, pet. denied).

16. A claim for unjust enrichment requires proof of the following elements: (1) defendants obtained a benefit from the plaintiff by fraud, duress, or taking undue advantage; or (2) when a contemplated agreement is unenforceable, impossible, not fully performed, thwarted by mutual mistake, or void for other legal reasons. *Burlington N. R.R. v. Southwestern Elec. Power Co.*, 925 S.W.2d 92, 97 (Tex. App.—Texarkana 1996), *aff’d*, 966 S.W.2d 467 (Tex. 1998); *Heldenfels Bros. v. City of Corpus Christi*, 832 S.W.2d 39, 41 (Tex. 1992); *Harker Heights v. Sun Meadows Land, Ltd.*, 830 S.W.2d 313, 319 (Tex. App.—Tyler 1996, no writ).

17. Here, the Defendants obtained the wire transfer funds by fraud or by taking undue advantage when John Doe Defendant defrauded Plaintiffs, causing Plaintiffs to send money to a fraudster’s account with Chase Bank. Plaintiffs therefore suffered a loss, and Defendants have been unjustly enriched, in the amount of \$4,905,000.00.

Aiding and Abetting as to Defendant Chase Bank

18. Plaintiffs adopt and incorporate by reference the foregoing paragraphs above as if fully stated herein. A court should also grant a judgment in favor of Plaintiffs based on the doctrine of aiding and abetting by assisting and participating. *See City of Fort Worth v. Phippen*, 439 S.W.2d 660, 665 (Tex. 1969). Assisting and participating has long been recognized as a theory for imposing joint liability in Texas. *See id.* When a defendant assists and participates in causing a particular result with another actor, the defendant is responsible for the result of the united effort if the act, by itself, was a breach of duty and was a substantial factor in causing the result. *See* RESTATEMENT (SECOND) OF TORTS § 876(c). It is not necessary for the defendant to know that the act of the other actor was tortious; an unintended tort will suffice. *See id.*

19. In the present case, Chase Bank assisted and/or participated in John Doe Defendant's (its customer) receipt of the stolen funds by opening the account despite evidence of fraudulent activity and allowing and/or by participating in the disbursements of the funds despite evidence of fraudulent activity, which caused Plaintiffs to suffer substantial damages. Based on information and belief, it appears likely that Chase Bank's customer's bank account was opened primarily for the purpose of committing bank fraud and was used under suspicious circumstances. In this case, the account was used to funnel money through a Chase Bank account and steal funds and/or money launder the funds.

20. Chase Bank is responsible for the result of this united effort because its breach of duty, negligence, and tortious conduct was a substantial factor in causing the losses Plaintiffs suffered. Therefore, if a fact finder determines that the account was improperly opened at Chase Bank, security procedures should have detected the bank fraud. Chase Bank will be held liable to Plaintiff for all damages sustained by Plaintiffs as a result of the claims asserted herein up to the face amount of the wire transfer, plus any lost interest and all consequential damages, including

attorneys' fees and expenses, incurred by Plaintiffs in connection with prosecution and/or defense of the claims associated with Chase Bank's customer's fraudulent receipt of the funds in the amount of \$4,905,000.00.

APPLICATION FOR TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION

21. Plaintiffs respectfully request that the Court immediately enter a temporary restraining order enjoining Defendants from transferring, diverting, depleting, using, or disposing of the funds representing the money received from the wire transfer in dispute. The Court also needs to order that such funds be immediately tendered to the registry of the Court or to Plaintiffs.

22. Plaintiffs adopt and incorporate by reference the foregoing paragraphs above as if fully stated herein. Plaintiffs ask that the Court grant and issue an *ex parte* temporary restraining order and/or permanent injunction to keep the "status quo" which courts define as "the last, actual, peaceable, noncontested status which preceded the pending controversy." *Universal Health Servs., Inc. v. Thompson*, 24 S.W.3d 570, 577 (Tex. App.—Austin 2000, no pet.) (quoting *Transp. Co. of Tex. v. Robertson Transps., Inc.*, 261 S.W.2d 549, 553–54 (Tex. 1953)).

23. The purpose of a temporary restraining order is to preserve the status quo ex ante of the subject matter of the litigation until a final hearing can be held on the merits of the case. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). An applicant for injunctive relief must show "(1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim." *Id.*

24. In order to preserve the status quo in this case, Defendants must be enjoined from transferring, diverting, depleting, using, or disposing of the proceeds from the fraudulent wire transfer, and after notice and a hearing, Defendants must be required to tender the proceeds within its possession into the registry of the Court or to Plaintiffs. Otherwise, Plaintiffs will be imminently and irreparably harmed. *See, e.g., In re Estate of Dilasky*, 972 S.W.2d 763, 767 (Tex. App.—

Corpus Christi 1998, no pet.) (“Delay and expense of litigation, as well as the time required to settle the issues, are factors which may be considered in determining whether a court should issue an injunction.”). Unless the temporary restraining order and injunction are issued, Plaintiffs have shown that the Defendants will likely transfer or dispose of the funds, and as a result, Plaintiffs will have no adequate remedy at law to recover the stolen money.

25. Plaintiffs have a probable right to the relief Plaintiffs seek on final hearing, and Plaintiffs are likely to succeed on the merits of this lawsuit. Defendants were not entitled to receive possession of the funds and obtained the funds through fraudulent means. Defendants are therefore liable to Plaintiffs for the amount of the wire transfer (\$4,905,000.00) as well as any and all damages resulting from its actions. Accordingly, Defendants are liable to Plaintiffs in the amount of \$4,905,000.00, and Plaintiffs will likely succeed on the merits of this lawsuit.

26. Plaintiffs will also suffer an irreparable injury if the Court does not issue a temporary injunction. Defendant’s refusal to return the funds and fraudulent scheme to obtain the funds shows that Defendants will likely either transfer or divert the funds. If the temporary restraining order and temporary injunction are not issued, Plaintiffs will suffer an imminent and irreparable injury. In particular, if the Defendants are not enjoined from transferring the funds and are not ordered to deposit any proceeds of the wire transfer or additional funds within their possession into the Court’s registry, there is a substantial likelihood that the Defendants will divert the funds and/or ultimately refuse to turn over the funds to Plaintiffs even after a judgment is obtained.

27. Additionally, Plaintiffs are entitled to the temporary injunction under the principles of equity and the laws of Texas relating to injunctions. *See* TEX. CIV. PRAC. & REM. CODE § 65.011(3). Plaintiffs are entitled to the relief demanded, and the relief requires the restraint of actions that are prejudicial to Plaintiffs. *See* TEX. CIV. PRAC. & REM. CODE § 65.011(1). Allowing

Defendants to retain possession of Plaintiffs' money would be grossly inequitable. These funds were supposed to be used in a real estate transaction.

28. Plaintiffs have suffered a substantial loss as a result of Defendants' actions, and yet, Defendants are attempting to retain possession of funds that they were never entitled to receive. This money belongs in equity and good conscience to Plaintiffs. Defendants cannot equitably be allowed to profit from their decision to retain fraudulently deposited funds. Under the principles of equity and the laws of Texas relating to injunctions, Plaintiffs are therefore entitled to an ex parte order enjoining Defendants from transferring or disposing of the proceeds and an order requiring the Defendants to deliver the proceeds within their possession to the registry of the Court or to Plaintiffs. Plaintiffs are entitled to this relief, and allowing Defendants to retain possession of the funds would be highly prejudicial to Plaintiffs.

29. Enjoining Defendants from transferring or diverting the proceeds of the wire transfer, from attempting to obtain possession of the funds, and ordering the Defendants to deposit these funds into the registry of the Court or tender the funds to Plaintiffs will serve the public interest. Balancing the equities and other factors, the significant potential of further irreparable harm to Plaintiffs without injunctive relief, and the lack of harm resulting from the entry of injunctive relief, demonstrates that the requested relief will not disserve the public interest.

30. Accordingly, pending the final determination of this action on its merits, Plaintiffs requests that this Court:

- Enjoin Defendants in any way transferring, diverting, depleting, using, or disposing of the funds that came from the wire transfer from Plaintiffs to John Doe Defendant's account at Chase Bank on or about August 22, 2024; and
- Order Defendants after notice and a hearing, to deposit the proceeds thereof and/or other funds that came from the wire transfer from Plaintiffs within their possession into the registry of the Court, or tender the funds to the Plaintiffs.

31. Plaintiffs are prepared to pay a reasonable bond upon the issuance of the temporary restraining order and temporary injunction.

CONDITIONS PRECEDENT

32. Any and all conditions precedent to Plaintiffs' right to bring this lawsuit and recover from the Defendants have been fully performed by Plaintiffs or have occurred.

PRAYER

Plaintiffs pray that Defendants be cited to appear and answer by written denial, under oath, if necessary, and that the Court grant Plaintiffs Judgment against Defendants as follows:

- (a) For all recoverable actual, special, and/or equitable damages or remedies as are set forth herein and at the time of trial, including exemplary damages;
- (b) For pre-judgment and post-judgment interest as provided by law;
- (c) For injunctive relief against Defendants, including the issuance of a temporary restraining order and a temporary injunction as described herein;
- (d) For reasonable and necessary attorneys' fees at all stages of trial and appeals; and
- (e) For further relief to which Plaintiffs may be justly entitled.

Respectfully submitted,

CRAIN, CATON & JAMES, P.C.

By: /s/ William P. Huttenbach

William P. Huttenbach

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kdang@craincaton.com

ATTORNEYS FOR PLAINTIFFS

CAUSE NO. _____

MARK J. EPLEY AND
ELIZABETH EPLEY

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IN THE DISTRICT COURT OF

V.

HARRIS COUNTY, TEXAS

JPMORGAN CHASE BANK, N.A. and
JOHN DOE DEFENDANT

_____ JUDICIAL DISTRICT

UNSWORN DECLARATION OF ELIZABETH EPLEY

THE STATE OF CONNECTICUT

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COUNTY OF FAIRFIELD

1. My name is Elizabeth Epley. I am one of the Plaintiffs in the above-styled lawsuit. Mark J. Epley is my husband. I am over 21 years of age, of sound mind and capable of making this affidavit. My address is 480 Field Point Road, Greenwich, Connecticut 06830. I have personal knowledge of the facts stated in this Affidavit, and they are true and correct.
2. I have reviewed Plaintiffs' Original Petition and Application for Temporary Restraining Order and Temporary Injunction and the facts stated therein are true and correct.
3. My husband and I received wiring instructions from John Doe Defendant on or about August 22, 2024. Pursuant to John Doe Defendant's instructions, I completed a wire transfer to John Doe Defendant's account with Chase Bank in the amount of \$4,905,000.00.
2. The funds were sent pursuant to a real estate transaction. The wire was sent but the intended recipient (our real estate agent) claimed to not have received the funds.
3. Upon learning that the wire transfer was apparently sent to the incorrect bank account as a result of a scam, my husband and I contacted Chase Bank to demand the return of the funds. Chase Bank has not returned the \$4,905,000.00, causing me and my husband to suffer damages.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Fairfield County, State of Connecticut, on the 29th day of August, 2024.

DocuSigned by:

Elizabeth Epley

88CFE50549AC48F

Elizabeth Epley

Unofficial Copy Office of Marilyn Burgess District Clerk

EXHIBIT A-3

Unofficial Copy Office of Marilyn Burgess District Clerk

COPY OF PLEADING PROVIDED BY PLT

CAUSE NUMBER: 202458112

PLAINTIFF: EPLEY, MARK	In the 157th Judicial
vs.	District Court of
DEFENDANT: JPMORGAN CHASE BANK NA	Harris County, Texas

CITATION

THE STATE OF TEXAS
County of Harris

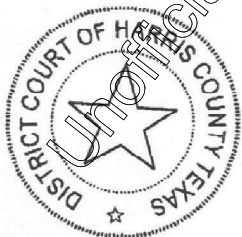
TO: JPMORGAN CHASE BANK N A
MAY BE SERVED THROUGH ITS REGISTERED AGENT
CT CORPORATION SYSTEM
1999 BRYAN ST SUITE 900 DALLAS TX 75201

Attached is a copy of PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION.

This instrument was filed on August 30, 2024 in the above numbered and styled cause on the docket in the above Judicial District Court of Harris County, Texas, in the courthouse in the City of Houston, Texas. The instrument attached describes the claim against you.

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the District Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org.

ISSUED AND GIVEN UNDER MY HAND and seal of said Court, at Houston, Texas, this August 30, 2024.



Marilyn Burgess

Marilyn Burgess, District Clerk
Harris County, Texas
201 Caroline, Houston, Texas 77002

Generated By: GERARDO PEREZ

Issued at request of:
DANG, KIMBERLY
3355 WEST ALABAMA
HOUSTON, TX 77098
Tel: (713) 986-9471
Bar Number: 24116246

Tracking Number: 74370071 EML

CAUSE NUMBER: 202458112

PLAINTIFF: EPLEY, MARK

In the 157th

vs.

Judicial District Court

DEFENDANT: JPMORGAN CHASE BANK NA

Harris County, Texas

OFFICER/AUTHORIZED PERSON RETURN

Came to hand at _____ o'clock _____ M., on the _____ day of _____, 20_____.

Executed at (address) _____ in _____ County at _____ o'clock _____ M., on the _____ day of _____, 20_____.

by delivering to _____ defendant, in person, a true copy of this Citation together with the accompanying _____ copy(ies) of the _____ Petition attached thereto and I endorsed on said copy of the Citation the date of delivery.

To certify which I affix my hand officially this _____ day of _____, 20_____.

FEE: \$ _____ of _____

County, Texas

Affiant By: _____ Deputy

On this day, _____, known to me to be the person whose signature appears on the foregoing return, personally appeared. After being by me duly sworn, he/she stated that this citation was executed by him/her in the exact manner recited on the return.

SWORN TO AND SUBSCRIBED BEFORE ME on this _____ of _____, 20_____

Notary Public

CAUSE NUMBER: 2024-58112

MARK J. EPLEY, ET AL
PLAINTIFF

VS.

IN THE 157TH JUDICIAL DISTRICT
COURT OF HARRIS COUNTY, TEXAS

JPMORGAN CHASE BANK, N.A., ET AL
DEFENDANT

RETURN OF SERVICE

My name is GUY CONNELLY. I am over the age of eighteen (18), I am not a party to this case, and have no interest in its outcome. I am in all ways competent to make this affidavit and this affidavit is based on personal knowledge. The facts stated herein are true and correct. My business address is: 207 S. BUFFALO ST. #77, CANTON TX, 75103, U.S.A.

ON Tuesday September 03, 2024 AT 12:37 PM - CITATION, PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION; UNSWORN DECLARATION OF ELIZABETH EPLEY came to hand for service upon JPMORGAN CHASE BANK, N.A. BY SERVING ITS REGISTERED AGENT, CT CORPORATION SYSTEM.

On Tuesday September 03, 2024 at 02:35 PM - The above named documents were hand delivered to: JPMORGAN CHASE BANK, N.A. BY SERVING ITS REGISTERED AGENT, CT CORPORATION SYSTEM BY DELIVERING TO SHAINA FENIMORE, INTAKE SPECIALIST @ 1999 BRYAN STREET, SUITE 900 DALLAS, TX 75201, in Person.

FURTHER AFFIANT SAYETH NOT.

STATE OF TEXAS

DECLARATION

"My name is GUY CONNELLY, my date of birth is 11/04/1951 my business address is 207 S. BUFFALO ST. #77, CANTON TX, 75103, U.S.A., and I declare under penalty of perjury that this affidavit is true and correct."

Executed in Collin County, State of Texas on Tuesday September 03, 2024



PSC#2201 EXP. 09/30/24

Declarant; Appointed in accordance with State Statutes.

2024.09.922143

efile@courtrecords.com

EXHIBIT A-4

Unofficial Copy Office of Marilyn Burgess District Clerk

CAUSE NO. 2024-58112

MARK J. EPLEY AND
ELIZABETH EPLEY

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IN THE DISTRICT COURT OF

V.

HARRIS COUNTY, T E X A S

JPMORGAN CHASE BANK, N.A. and
JOHN DOE DEFENDANT

157TH JUDICIAL DISTRICT

**DEFENDANT, JPMORGAN CHASE BANK, N.A.'S
ORIGINAL ANSWER**

TO THE HONORABLE COURT:

COMES NOW, JPMorgan Chase Bank, N.A. ("Chase"), and files its Original Answer to Plaintiffs' Original Petition and states the following:

GENERAL DENIAL

1. Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Chase generally denies each and every allegation contained in Plaintiffs' Petition and demands strict proof thereof by a preponderance of the evidence.

AFFIRMATIVE DEFENSES AND OTHER DEFENSIVE MATTERS

2. Without assuming any burdens other than those imposed by applicable law, Chase sets forth the following affirmative defenses and other matters in defense or rebuttal, each asserted in combination or in the alternative, subject to and without waiving its general denial:

3. Pleading additionally and in the alternative, and without waiver of the foregoing, Chase is not liable for Plaintiffs' claims pursuant to the duties, liabilities, and rights of the parties as provided in Chapter 4A of the Uniform Commercial Code. Further, Plaintiffs' claims against Chase are preempted by Chapter 4A of the Uniform Commercial Code and should be dismissed.

4. Pleading additionally and in the alternative, and without waiver of the foregoing, Plaintiffs' claims are barred in whole or in part by Article 4A of the Uniform Commercial Code, including but not limited to Section 4A.207.

5. Pleading additionally and in the alternative, and without waiver of the foregoing, Chase objects to Plaintiffs' request for a temporary injunction because Plaintiffs' application for injunctive relief does not show that Plaintiffs have a probable right to relief against Chase on a final hearing of the case. Chase further objects to Plaintiffs' request for a temporary injunction because Plaintiffs' application for injunctive relief against Chase does not show that Plaintiffs will sustain irreparable injury and Plaintiffs have an adequate remedy at law.

6. Pleading additionally and in the alternative, and without waiver of the foregoing, Plaintiffs' claim for aiding and abetting must be dismissed because Texas does not recognize such cause of action.

7. Pleading additionally and in the alternative, and without waiver of the foregoing, Chase denies that it received, retained or benefitted from any of the funds forming the basis of the subject wire transfer.

8. Pleading further and in the alternative, without waiver of the foregoing, Chase is not liable to Plaintiffs for Plaintiffs' tort claims because said tort claims are barred by the economic-loss-rule.

9. Pleading additionally and in the alternative, and without waiver of the foregoing, Chase states that in the event of recovery of damages from Chase in this case, any award of pre- and post-judgment interest is limited by the provisions of Sections 304.1045 and 304.003 of the Texas Finance Code.

10. Pleading additionally and in the alternative, and without waiver of the foregoing, Chase would show that the imposition of exemplary damages against Chase is unwarranted. Chase specifically invokes the procedural and substantive protections accorded to Chase by the Due Process Clause of the United States Constitution, the Due Course of Law provisions of the Texas Constitution, and Chapter 41 of the Texas Civil Practice and Remedies Code, including the specific findings before an award of exemplary damages may be made, and the statutory “cap” on such exemplary damages. Chase further specifically invokes Sections 41.003, 41.005, 41.006, 41.007, 41.008 and 41.011 of the Texas Civil Practice and Remedies Code.

RULE 193.7 NOTICE

11. Pleading further, and without waiver of the foregoing, Chase hereby gives actual notice to Plaintiffs and all other parties that any and all documents produced during discovery or otherwise may be used against Plaintiffs and all other parties at any pre-trial proceeding and/or trial without the necessity of authenticating the document. This notice is given pursuant to Rule 193.7 of the Texas Rules of Civil Procedure.

RIGHT TO AMEND

12. As authorized by Rule 63 of the Texas Rules of Civil Procedure, Chase hereby reserves its right to supplement and/or amend its answer and accompanying responsive pleadings as discovery progresses and additional information becomes available.

PRAYER

WHEREFORE, JPMorgan Chase Bank, N.A. (“Chase”) prays that Plaintiffs take nothing as to Chase, that the Court deny Plaintiffs’ request for a temporary injunction, that Chase recover its attorney’s fees and costs of court incurred, and for such other and further relief as shall be just.

Respectfully submitted,

STEPTOE & JOHNSON PLLC

By: /s/ Jason R. Grill

Jason R. Grill

State Bar No.: 24002185

jason.grill@steptoe-johnson.com

Brice Phillips

State Bar No.: 24125358

brice.phillips@steptoe-johnson.com

1780 Hughes Landing Boulevard, Suite 750

The Woodlands, Texas 77380

281.203.5700

281.203.5701 (facsimile)

*Attorneys for Defendant, JPMorgan Chase Bank,
N.A.*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded to all parties listed below as indicated on this the 30th day of September, 2024:

William P. Huttenbach

CRAIN, CATON & JAMES, PC

1401 McKinney, Suite 1700

Houston, Texas 77010

whuttenbach@craincaton.com

Attorneys for Plaintiffs, Mark J. Epley and

Elizabeth Epley

/s/ Jason R. Grill

Jason R. Grill

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Tracey Tarvin on behalf of Jason Reynolds Grill
 Bar No. 24002185
 tracey.tarvin@steptoe-johnson.com
 Envelope ID: 92611998
 Filing Code Description: Answer/ Response / Waiver
 Filing Description: Defendant Chase's Original Answer
 Status as of 9/30/2024 3:33 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Kimberly Dang		kdang@craincaton.com	9/30/2024 3:26:51 PM	SENT
Kimberly Dang		kdang@craincaton.com	9/30/2024 3:26:51 PM	SENT
William "Pat" Huttenbach		huttenbach-efile@craincaton.com	9/30/2024 3:26:51 PM	SENT
William "Pat" Huttenbach		huttenbach-efile@craincaton.com	9/30/2024 3:26:51 PM	SENT
Jason Grill		Jason.Grill@Steptoe-Johnson.com	9/30/2024 3:26:51 PM	SENT
Brice Phillips		brice.phillips@steptoe-johnson.com	9/30/2024 3:26:51 PM	SENT

Unofficial Copy Office of William Burgess District Clerk

EXHIBIT A-5

Unofficial Copy Office of Marilyn Burgess District Clerk

2024-58112

COURT: 157th

FILED DATE: 8/30/2024

CASE TYPE: OTHER CIVIL



EPLEY, MARK

Attorney: HUTTENBACH, WILLIAM PATTERSON

VS.

JPMORGAN CHASE BANK NA

Attorney: GRILL, JASON REYNOLDS

Docket Sheet Entries

Date	Comment
8/30/2024	TRORX - ORDER SIGNED GRANTING TEMPORARY RESTRAINING ORDER
8/30/2024	STBNX - ORDER SETTING BOND SIGNED
8/30/2024	CASO - ORDER SIGNED SETTING HEARING
9/11/2024	XTROX - ORDER EXTENDING TEMPORARY RESTRAINING ORDER SIGNED
9/11/2024	CASO - ORDER SIGNED SETTING HEARING

Unofficial Copy Office of Martin Burgess District Clerk

EXHIBIT B

Unofficial Copy Office of Marilyn Burgess District Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARK J. EPLEY AND
ELIZABETH EPLEY

V.

JPMORGAN CHASE BANK, N.A., and
JOHN DOE DEFENDANTS

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CIVIL ACTION NO. 4:24-CV-_____
(Harris County Cause #2024-58112)

LIST OF COUNSEL OF RECORD

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William P. Huttenbach
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whuttenbach@craincaton.com

ATTORNEYS FOR DEFENDANT, JPMORGAN CHASE BANK, N.A.

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S.D. Tex. No. 256935
Brice P. Phillips
State Bar No. 24125358
S.D. Tex. No. 3803876
STEPTOE & JOHNSON PLLC
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The Woodlands, Texas 77380
281.203.5700
281.203.5701 (facsimile)
jason.grill@steptoe-johnson.com
brice.phillips@steptoe-johnson.com

EXHIBIT C

Unofficial Copy Office of Marilyn Burgess District Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARK J. EPLEY AND
ELIZABETH EPLEY

V.

JPMORGAN CHASE BANK, N.A., and
JOHN DOE DEFENDANTS

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CIVIL ACTION NO. 4:24-CV-_____
(Harris County Cause #2024-58112)

INDEX TO DEFENDANT'S NOTICE OF REMOVAL

EXHIBIT A – State Court Papers and Matters

- Exhibit A-1 10/01/2024 Harris County District Court's Detail Report
- Exhibit A-2 08/30/2024 Plaintiffs' Original Petition
- Exhibit A-3 09/03/2024 Return of Service
- Exhibit A-4 09/30/2024 Chase's Original Answer
- Exhibit A-5 10/01/2024 Docket Sheet

EXHIBIT B – List of Known Counsel of Record

EXHIBIT C – Index to Defendant's Notice of Removal

Unofficial Copy Office of Mallyn Burgess District Clerk