

DC-20-05797

Cause No. \_\_\_\_\_

STARWALK OF DALLAS, LLC AND  
KONA-WOOD HOUSTON, LLC,  
On behalf of themselves and  
all others similarly situated

Plaintiffs,

vs.

JPMORGAN CHASE & CO.  
D/B/A CHASE BANK

Defendant.

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IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

\_\_\_\_\_ JUDICIAL DISTRICT

**PLAINTIFFS’ ORIGINAL PETITION**

Plaintiffs Starwalk of Dallas, LLC (“Starwalk”) and Kona-Wood Houston, LLC (“Kona-Wood”) on behalf of themselves and all others similarly situated, file this Original Petition, complaining of Defendant JPMorgan Chase & Co. d/b/a Chase Bank (“Chase Bank” or “Chase”). In support, Starwalk and Kona-Wood state the following:

**I.  
NATURE OF THE CASE**

1. This is a class action against Defendant Chase Bank for deceiving and defrauding small business owners in connection with the Paycheck Protection Program (“PPP”) administered by the Small Business Administration (“SBA”). Defendant made misrepresentations to many small business owners that it would assist them with their PPP loan applications and submit them for approval. Unbeknownst to Class Members, Defendant chose to prioritize select customers and “bigger businesses” for approval to the detriment of Class Members. Defendant knowingly and negligently chose to accept federal money to process PPP loans while knowing it would not do so

or did not have sufficient infrastructure in place to handle the applications submitted, to the detriment of Plaintiffs and Class Members.

2. Plaintiffs, on behalf of themselves and Class Members, assert causes of action for fraud, fraud in the inducement, breach of fiduciary duty, breach of contract, negligence, and violations of the Deceptive Trade Practices Act, and seek to recover actual and consequential damages of no less than \$10,000,000, exemplary damages, treble damages, attorneys' fees and costs.

## **II. PARTIES AND PROCESS**

3. Plaintiff Starwalk is a limited liability company organized under the laws of the State of Texas with its principal place of business in Dallas, Texas.

4. Plaintiff Kona-Wood is a limited liability company organized under the laws of the State of Texas with its principal place of business in Dallas County, Texas.

5. Defendant Chase Bank is a corporation organized under the laws of the State of Delaware and conducts business in Dallas County, Texas. Chase Bank may be served with process by serving its registered agent, CT Corporation System, at 1999 Bryan St., Suite 900, Dallas, Texas 75201-  
3136.

## **III. JURISDICTION AND VENUE**

6. The Court has jurisdiction over the parties and subject matter in this suit. The amount in controversy is within the jurisdictional limits of the Court.

7. Venue is proper in Dallas County, Texas, pursuant to the Texas Civil Practice and Remedies Code Section 15.002(a)(1) because it is the county in which a substantial part of the events or omissions giving rise to the claims herein occurred.

## **IV.**

## DISCOVERY CONROL PLAN

8. Pursuant to Rule 190.4 of the Texas Rules of Civil Procedure, Plaintiff intends to conduct discovery under Level 3.

### V. FACTS

9. Plaintiffs are small businesses conducting business in Dallas County, Texas.

10. Plaintiffs, on or about April 3, 2020, inquired about the PPP program administered by the Small Business Administration (SBA). Plaintiffs learned that they were eligible to apply through Defendant Chase Bank, because an existing relationship existed.

11. Plaintiffs contacted a representative for Chase Bank on or about April 3, 2020—the first day that Chase began accepting PPP applications—for assistance in submitting applications for the PPP program. Plaintiffs were advised that Chase Bank could help them, but that Plaintiffs should apply later as Chase was experiencing some issues on that day. Chase also advised Plaintiffs that the bank would soon be sending an email to all its customers instructing them how to best apply. Plaintiff never received that email.

12. The following Monday, Plaintiffs noticed that Chase was accepting PPP applications online. Plaintiffs applied for PPP funding by completing Chase's online application.

13. Between April 3 and April 13, 2020, Plaintiffs unsuccessfully attempted to secure more information regarding the status of application. Plaintiffs never received any notification that their applications were approved.

14. Plaintiffs soon learned that PPP funds were depleted.

15. Plaintiffs did not apply for the loans with any other bank based on Chase Bank's representation that it could process and submit the loan applications to the SBA.

16. Upon information and belief, Defendant never properly processed or submitted Plaintiffs' loan applications.

17. Chase Bank never properly processed or submitted the loans of many other small businesses that were submitted on or about April 3, 2020 or April 6, 2020. Instead, Chase Bank selected among its bigger "small businesses" to prioritize and process their loans to the detriment of its other small business customers.

## **VI. CLASS ACTION ALLEGATIONS**

18. Pursuant to TEX. R. CIV. P. 42, Plaintiffs bring this action as a class action on behalf of themselves and all members of the following Class of similarly situated persons and entities:

All Chase Bank small business customers who utilized Chase Bank for assistance with and processing of their PPP loans administered by the SBA.

Excluded from the Class are (i) Chase Bank senior executives and their immediate family members, and (ii) the Court, Court personnel, and their immediate family members.

19. On information and belief, the proposed Class consists of hundreds of entities, the joinder of which in one action is impracticable. The precise number and identities of the Class Members are currently unknown to Plaintiffs but can easily be derived from Defendant's records.

20. Defendant violated the rights and interests of each Class Member in the same manner by their above-described uniform wrongful actions—to wit, wrongfully and knowingly misrepresenting to Plaintiffs and Class Members that they could and would process their PPP loans in a timely, fair and impartial fashion and/or misrepresenting their ability to provide PPP loan services to Class Members.

21. Common questions of law and fact predominate over any questions affecting individual Class Members including, *inter alia*:

- (i) whether Defendant's above-described wrongful actions constitute fraud;
- (ii) whether Defendant's above-described wrongful actions constitute fraudulent inducement;
- (iii) whether Defendant's above-described wrongful actions constitute breach of fiduciary duty;
- (iv) whether Defendant's above-described wrongful actions constitute breach of contract;
- (v) whether Defendant's above-described wrongful actions constitute breach of an implied contract;
- (vi) whether Defendant's above-described wrongful actions constitute negligence;
- (vii) whether Defendant's above-described wrongful actions constitute breach of the Texas Deceptive Trade Practices-Consumer Protection Act;
- (viii) whether Defendant's above-described wrongful actions directly or proximately caused Plaintiffs and Class Members to suffer damages; and
- (ix) whether Plaintiffs and Class Members are entitled to recover actual damages, consequential damages, punitive damages, treble damages, pre- and post-judgment interest, attorneys' fees, litigation expenses, and court costs and, if so, the amount of the recovery.

22. Plaintiffs' claims are typical of Class Members' claims because Plaintiffs and Class Members are all victims of Defendant's above-described wrongful actions.

23. Plaintiffs and their counsel will fairly and adequately represent the interests of Class Members. Plaintiffs have no interests antagonistic to, or in conflict with, those of any of the Class Members. Plaintiffs' counsel is experienced in leading and prosecuting class actions and complex commercial litigation.

24. A class action is superior to all other available methods for fairly and efficiently adjudicating Plaintiffs' and Class Members' claims. Plaintiffs and Class Members have been harmed as a direct and proximate result of Defendant's above-described wrongful actions. Litigating this case as a class action is appropriate because (i) it will avoid a multiplicity of suits and the corresponding burden on the courts and Parties, (ii) it would be virtually impossible for all Class Members to intervene as parties in this action, (iii) it will allow numerous persons with claims too small to adjudicate on an individual basis because of prohibitive litigation costs to obtain redress for their injuries, and (iv) it will provide court oversight of the claims process once Defendant's liability is adjudicated.

25. Certification, therefore, is appropriate under TEX. R. CIV. P. 42(b)(3) because the above-described common questions of law or fact predominate over any questions affecting individual Class Members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

26. Absent a class action, Defendant will retain the benefits of their wrongdoing despite violating the law and inflicting substantial damages on Plaintiffs and Class Members.

## **VII. CAUSES OF ACTION**

### **Count One – Fraud and Fraudulent Inducement**

27. Pursuant to Rule 58 of the Texas Rules of Civil Procedure, Plaintiffs reassert and incorporate all allegations set forth herein.

28. Defendant lead Plaintiffs and Class Members to believe they had the capability to help them, when they could not. Defendant knowingly made false representations to Plaintiffs and

Class Members as to material facts. Defendant knew at the onset that they could not handle or process the PPP loan on Plaintiffs' behalf.

29. Defendant failed to represent the interests of Plaintiffs and Class Members. They lead Plaintiffs and Class Members to believe they had the capability to help them, when they could not. Plaintiffs and Class Members could have explored their options elsewhere, but for representations from Defendant. Plaintiffs and Class Members did not—only to find out later that they would not receive funding and their loans were never actually properly process and submitted.

30. Defendant also engaged in fraud by selectively including and prioritizing certain applicants in the application process. Defendant chose select customers among “bigger businesses” and processed those applications over those of Plaintiffs and Class Members. Chase Bank and its agents had no intention or ability it seems to help smaller businesses—despite representing they would and could. This clearly proved to be a false assertion—a false assertion Defendant knew from the onset.

31. As a result of relying on Defendant's representations, Plaintiffs and Class Members have been damaged in an amount within the jurisdictional limits of the Court.

## **Count Two – Breach of Fiduciary Duty**

32. Pursuant to Rule 58 of the Texas Rules of Civil Procedure, Plaintiffs reassert and incorporate all allegations set forth herein.

33. Defendant had a fiduciary relationship with Plaintiffs and Class Members as their banking customers—owing Plaintiffs and Class Members advice and proper representations. Defendant failed to do so.

34. Defendant breached their fiduciary duty by making false representations of fact and by intentionally failing to properly process and submit Plaintiffs' and Class Members' applications. Defendant chose favorites and "bigger businesses" to receive funding and *actually* process their applications—to the detriment of Plaintiffs and Class Members.

35. Defendant failed to adequately and properly submit Plaintiffs' and Class Members' applications, without notifying Plaintiffs and Class Members of its intention not to do so and/or failed to inform Plaintiffs and Class Members of their inability to process their applications.

36. As a result of Defendant's breaches of their fiduciary duties, Plaintiffs and Class Members have been damaged in an amount within the jurisdictional limits of the Court.

### **Count Three – Breach of Contract**

37. Pursuant to Rule 58 of the Texas Rules of Civil Procedure, Plaintiffs reassert and incorporate all allegations set forth herein.

38. Plaintiffs and Class Members entered into valid, enforceable agreements with Chase Bank for Plaintiffs and Class Members to submit their applications to Chase Bank and for Chase Bank to process and submit Plaintiffs' and Class Members' applications. Plaintiffs and Class Members are in privity with Chase Bank as parties to valid, enforceable contracts or implied contracts. Plaintiffs and Class Members have standing to sue Chase Bank for breach of those agreements.

39. Despite Plaintiffs and Class Members fulfilling their obligations under the agreements, Chase Bank breached the agreements when it failed to properly process and submit Plaintiffs' and Class Members' applications after agreeing to do so.

40. As a result of Chase Bank's breach, Plaintiffs and Class Members have been injured. Plaintiffs' and Class Members damages are within the jurisdictional limits of the Court.



#### **Count Four – Negligence**

41. Pursuant to Rule 58 of the Texas Rules of Civil Procedure, Plaintiffs reassert and incorporate all allegations set forth herein.

42. In the alternative, Chase Bank was negligent in affirmatively stating that it could properly handle the loan process—that the federal government is paying them to do with taxpayer dollars—and just couldn't do it for Plaintiffs and Class Members.

43. Defendant owed a duty of care to Plaintiffs and Class Members but breached that duty and made negligent misrepresentations.

44. Defendant's breaches of their duties owed to Plaintiffs and Class Members proximately caused their damages, which are within the jurisdictional limits of the Court.

#### **Count Five – Violation of the Deceptive Trade Practices Act**

45. Pursuant to Rule 58 of the Texas Rules of Civil Procedure, Plaintiffs reassert and incorporate all allegations set forth herein.

46. Plaintiffs and Class Members were consumers as defined in the Texas Deceptive Trade Practices-Consumer Protection Act ("DTPA"), embodied in the Texas Business & Commerce Code §17.46 *et seq.* Defendant are persons who can be sued for DTPA violations.

47. Defendant knowingly and/or intentionally committed false, misleading, and deceptive acts and, in doing so, violated provisions of the DTPA. In promising to (1) assist Plaintiffs and Class Members in the PPP loan application process, and (2) timely process and submit Plaintiffs' and Class Members' loan applications, but failing to do so as promised, Defendant knowingly and/or intentionally violated the DTPA in the following, but not so limited, ways:

- Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they

do not have or that a person has sponsorship, approval, status, affiliation, or connection which he does not;

- Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another; and
- Failing to disclose information about goods or services that was known at the time of the transaction with the intent to induce the consumer into a transaction that that the consumer would not have entered into the information been disclosed. TEX. BUS. & COM. CODE §17.46.

48. Defendant did not provide the services as promised and engaged in an unconscionable course of action to defraud Plaintiffs and Class Members.

49. Because Defendant acted knowingly and/ or intentionally, Plaintiffs and Class Members are entitled to and seeks to recover treble damages under the Texas Deceptive Trade Practices Act. TEX. BUS. & COM. CODE §17.50 (b)(1).

### **VIII. CONDITIONS PRECEDENT**

50. All conditions precedent to Plaintiffs' and Class Members' recovery and the claims made the subject of this suit have been performed or have occurred.

### **IX. EXEMPLARY DAMAGES**

51. Plaintiffs and Class Members seek exemplary damages against Defendant pursuant to Chapter 41 of the Texas Civil Practice and Remedies Code. Exemplary damages are justified by Defendant's malice and ill will demonstrated by its knowledge and assistance in the fraud committed against Plaintiffs and Class Members.

**X.**  
**ATTORNEYS FEES**

52. Pursuant to Rule 58 of the Texas Rules of Civil Procedure, Plaintiffs reassert and incorporate all allegations set forth herein.

53. Pursuant to Chapter 38 of the Texas Civil Practice and Remedies Code, Plaintiffs and Class Members are entitled to recover reasonable attorney's fees and costs in the prosecution of this action.

**XI.**  
**PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiffs and Class Members respectfully pray that Defendant be cited to answer herein and that upon final trial of this case, the following relief be awarded:

1. Plaintiffs and Class Members be granted judgment against Defendant in the amount of actual and other damages of no less than \$10,000,000;
2. Plaintiffs and Class Members be granted judgment against Defendant for exemplary damages in a sum determined by the trier of fact;
3. Plaintiffs and Class Members be granted judgment against Defendant for treble damages as authorized by TEX. BUS. & COM. CODE §17.50 (b)(1) for knowing and/ or intentional conduct;
4. Plaintiffs and Class Members be granted judgment against Defendant in the amount of reasonable, necessary, and customary legal fees and expenses incurred in this lawsuit;
5. Plaintiffs and Class Members be granted judgment against Defendant for pre-judgment interest as provided by §302.002 of the Texas Finance Code, and post-judgment interest on the total amount of the judgment until paid at the maximum rate allowed by law, which is the interest rate published by the Consumer Credit Commissioner;
6. Plaintiffs and Class Members be granted judgment against Defendant for all costs of court; and Plaintiffs be granted such other and further relief, special or general, legal or equitable, to which Plaintiffs may show itself to be justly entitled to receive.

Respectfully submitted,



A handwritten signature in blue ink, appearing to read 'A. Kennard, Jr.', is positioned above a horizontal line.

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Alfonso Kennard, Jr.  
Texas Bar No. 24036888  
Alfonso.Kennard@KennardLaw.com  
Kevin T. Kennedy  
Texas Bar. No. 24009053  
Kevin.Kennedy@KennardLaw.com  
2603 Augusta Drive, Suite 1450  
Houston Texas 77057  
713/742.0900 (Phone)  
713/742.0951 (Fax)

**ATTORNEYS FOR PLAINTIFFS**