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ORIGINAL

~~CAUSE NO. PR-10-1517-3~~
PR-11-3238-3

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JOHN F. WARREN
COUNTY CLERK
DALLAS COUNTY

IN RE: ESTATE OF	§	**IN THE PROBATE COURT**
	§	
MAX D. HOPPER,	§	
	§	
DECEASED	§	
JO N. HOPPER,	§	**NO. 3**
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
JP MORGAN CHASE, N.A., STEPHEN B. HOPPER and LAURA S. WASSMER,	§	CITATION ISSUED 9.27.11
	§	
	§	
Defendants.	§	**DALLAS COUNTY, TEXAS**

PLAINTIFF'S ORIGINAL PETITION FOR: DECLARATORY JUDGMENT, BREACH OF CONTRACT, BREACH OF FIDUCIARY DUTY, FRAUD, ET AL, FOR REMOVAL OF INDEPENDENT ADMINISTRATOR, AND, JURY DEMAND

COMES NOW Jo N. Hopper, ("Plaintiff", or "Mrs. Max D. Hopper" or "Mrs. Hopper" or "Surviving Spouse") widow of Max D. Hopper ("Decedent") and files this *Plaintiff's Original Petition for: Declaratory Judgment, Breach of Contract, Breach of Fiduciary Duty, Fraud, et al., For Removal of Independent Administrator, And, Jury Demand* against JPMorganChase, N.A., Individually and as the Independent Administrator of the above-referenced estate, ("Bank", or "Defendant Bank", or "Independent Administrator" or "IA") and Stephen B. Hopper ("Stephen" or "Defendant S. Hopper") and Laura S. Wassmer ("Laura" or "Defendant Wassmer") with Defendant Bank, Defendant S. Hopper and Defendant Wassmer, collectively referred as the Defendants or

children ("Defendants" or "children") herein. As grounds thereof, Plaintiff would show this Court the following:

I.

PRELIMINARY MATTERS

A.

Discovery Control Plan

Discovery is intended to be conducted under Level 3 of Rule 190 of the Texas Rules of Civil Procedure.

B.

Jurisdiction

This Court has jurisdiction pursuant to Tex. Probate Code Ann. §4C and §4D.

C.

Venue and Service of Process

Venue is in Dallas County, Texas where the administration of the Estate of Max D. Hopper, Deceased, is pending in Probate Court No. 3 of Dallas County, Texas, under Cause No. PR-10-1517-3. Dallas County Texas (the "Hopper Administration") and where Defendant Bank is located and has its principal place of business.

1.

Defendant Bank, the personal representative of the Estate of Max D. Hopper, Deceased, acting as Independent Administrator, has appeared in this cause, and Citation and service will be made on Defendant Bank as set forth in §§ 33 and 149C of the Texas Probate Code ("TPC") and under the Texas Rules of Civil Procedure. Plaintiff hereby seeks issuance of Citation against said Independent Administrator.

2.

Decedent Max D. Hopper ("Decedent") had two children (the "children"): Stephen B. Hopper ("Stephen") and Laura S. Wassmer ("Laura"). They are interested parties for all purposes as to this action and are each also Defendants herein. They have appeared in this cause for all purposes through their counsel of record pursuant to a *Notice of Appearance and Request for Service of Notices and Pleadings* ("Notice") filed herein on July 8, 2011. Service may therefore be had on them (the children – as Defendants) through their counsel of record pursuant to the Texas Rules of Civil Procedure.

D.

Standing

Pursuant to Tex. Probate Code Ann. ("TPC") §3(r), Plaintiff is a "person interested" in the Estate and has standing to bring this action.

II.

FACTUAL BACKGROUND

Overview of Parties

A.

1.

The following entity acting in the following capacity is a party Defendant to this lawsuit: JPMorgan Chase Bank, N.A., (the "Bank" or "Defendant Bank" or "Independent Administrator" or "IA", interchangeably) acting in its capacity as Independent Administrator of the Estate of Max D. Hopper, Deceased and individually. The Bank was appointed IA, by agreement of Plaintiff and the children, on June 24, 2010, per Order of this Court.[1] The Bank has undertaken its actions and conduct herein through its agents and employees, including, without limitation, Susan H. Novak ("Novak"), a Vice-President of the Bank.

2.

Also as parties hereto are Defendants Stephen B. Hopper ("Stephen") and Laura S. Wassmer ("Laura") with Stephen and Laura being the only two natural children of Decedent. No other children were born to or adopted by Decedent.

3.

Plaintiff is an interested person in the Estate as a Surviving Spouse of Decedent.

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[1] The Bank also acted previously as Temporary Administrator per the Court's prior order – so has been involved intimately with this matter since shortly after Decedent's death.

Probate Code usage of the term "Estate" and other pertinent terms

B.

For purposes of this Petition, Plaintiff will use the words "estate", "community property", and "subject to administration" as they are used in the Texas Probate Code, to-wit:

1. The word "estate" shall refer to Decedent's separate property and Decedent's one-half interest in those assets which were community property immediately prior to the Decedent's death.
2. The term "community property" shall refer both to the Decedent's one-half interest in those assets which were community property immediately prior to Decedent's death, and to the Surviving Spouse's (i.e., Plaintiff's) one-half interest in those assets which were community property immediately prior to Decedent's death.
3. The Surviving Spouse's (Plaintiff's) one-half interest in those assets which were community property immediately prior to the Decedent's death are, under TPC §177, subject to administration by the Independent Administrator, but are owned by the Surviving Spouse at the instant of death, subject to such administration.
4. The term "Homestead" as used herein (also the "Residence" or "Robledo") means and refers to that house and real property located at No. 9 Robledo Drive, Dallas, Dallas County, Texas 75230 which Decedent and Plaintiff purchased as community property during their marriage and in which Plaintiff has continued to reside since Decedent's death and which Homestead she has claimed as her "Homestead" under law and the Texas Constitution.

Property Still Under Administration, and,
Homestead Not Subject to Administration

C.

The Estate ["Estate"] (using the definition set forth under the TPC, § 3(l) and as used in each of the other sections thereof which use that statutorily defined term -- meaning the Decedent's one-half of the community and the Decedent's separate property) has not been fully distributed. With respect to the Surviving Spouse's property which is under administration (but not part of the Estate), much thereof has already been transferred by the Independent Administrator into the name of the Surviving Spouse and released from administration. However, a portion of the Surviving Spouse's property (her one-half interest in what was community property prior to Decedent's death) is still in the Bank's possession (as IA) for purposes of administration pursuant to § 177 of the TPC. Further, the Surviving Spouse now owns one-half of the Homestead *in fee* (her former community one-half thereof) and is exercising her Constitutional rights of homestead with respect to (and as a burden against) the other one-half thereof. Her Homestead is not subject to administration by the Independent Administrator pursuant to the provisions of TPC § 271 and applicable law.

Definitional Understanding of "Homestead"

D.

It is also critical to note how the word "homestead" is used in the TPC, in that misunderstanding and imprecision as to the use and meaning of that term, leads to misunderstanding of the TPC's statutory *schema* and therefore pernicious legal results, as well. TPC § 284 (following

the Texas Constitution) is quite clear that the "homestead" may not be partitioned during the life of the Surviving Spouse, so long as it is used as a homestead. Further, the TPC sections surrounding § 284, clarify that the express prohibition on partition (likewise following the Texas Constitution) extends to the entire property, i.e., the whole *res*, not just the Surviving Spouse's right to the mere sole use and occupancy of the property. Thus, TPC § 283 provides on the instant facts that at Decedent's death, the "homestead" descended and vested in like manner as other real property. This use of the term "homestead" in § 283 is clearly a reference to the entire property (*res*), not just the Surviving Spouse's use and occupancy, since that use and occupancy doesn't descend and vest. Likewise, TPC § 285 provides that the "homestead" can be partitioned when the surviving spouse dies. Of course, the surviving spouse's right of use and occupancy ends at the moment of the surviving spouse's death and thus the "homestead" as referenced could not be partitioned after that death. So the term "homestead" is again used to reference the entire property, that is the *res*, not just merely to the right of use and occupancy – which is often merely colloquially referenced as the "homestead" or "homestead right" – without actual reference to the statutory language itself. As a result, by correct application of the TPC and the term "homestead", as of the moment of Mr. Hopper's death, the TPC absolutely forbade the partition of the entire Robledo property (i.e., Plaintiff's Homestead) as long as it was and is used and occupied as a homestead by the surviving spouse. It was then, and still is, so used by the Plaintiff, the Surviving Spouse as her "homestead" in accordance with law.

ADDITIONAL FACTS

E.

Decedent died intestate on January 25, 2010. Defendant Bank has been Independent Administrator by Order of the Court since June 24, 2010. Decedent and Plaintiff together owned substantial community property; each also owned only very minor separate property; virtually none. The appointment of the IA was made by an agreement in writing entered into by the Bank, the Surviving Spouse (Plaintiff), and the Decedent's heirs (which include the Plaintiff as an heir with respect to a partial interest in the very minor separate property owned by Decedent at the time of Decedent's death – as well as Defendants Wassmer and S. Hopper). Decedent and Plaintiff lived in the Homestead at the time of Decedent's death.

F.

An Inventory, Appraisement and List of Claims (the "Inventory") has finally been filed in the Estate on June 24, 2011 – exactly a year after the IA's appointment. The Inventory was finally filed after **three (3) time extensions** for the IA/Bank to do so (as granted by this Honorable Court). The Inventory is not proper for, at least, the reasons set forth in *Plaintiff's Original Complaint for Correction of Inventory, Appraisement and List of Claims* (the "*Complaint*") by your Plaintiff Jo N. Hopper filed on June 30, 2011, to which reference is prayed, and whose factual allegations are incorporated herein by reference as if set forth verbatim. The Bank's own counsel has advised the parties in writing that the Inventory, even when finally filed after three extensions, was but a "work in progress." The Inventory was incomplete at the time of filing.

G.

Plaintiff and Decedent were married for over 28 years at the time of Decedent's death. Decedent, who had been divorced prior to marrying Plaintiff, had his two children, but very little in the way of much property at the time of his marriage, almost three decades ago, to Plaintiff. Working together during their marriage, they amassed a large community estate. Decedent never executed a Will and as set out above; he died intestate. He died wholly unexpectedly without warning or any long illness – he simply died within three (3) or so hours of suddenly not feeling well.

H.

After Decedent's intestate death, Plaintiff and the children considered various options to handle the administration of the Estate left by Decedent. As part of this process Plaintiff and the children (Defendants Wassmer and S. Hopper) were introduced to the Bank. In order to win the business through agreement of the interested persons, to-wit: the children and the Plaintiff, the Bank made certain material representations and inducements to earn the Hopper family's estate administration business (some of which were also made before third-party witnesses as well). Numerous discussions were held and numerous promises and inducements were offered. Eventually, this all culminated in Ms. Novak from the Bank (for the Bank) on or about April 16, 2010 sending to both Plaintiff and the children a written proposal (subject to acceptance) via email. A true copy of same as executed by Plaintiff (the "Contract") is attached as Exhibit "A" hereto. Ms. Novak was at the time, and still is, both the Vice-President and Senior Fiduciary Officer in the Private Wealth Management/Estate Settlement Unit of the Dallas Branch of the Bank. Ms. Novak has, since those

early days up to the present, been the "point person" within the Bank in charge of the administration of the Hopper Administration. The letter dated April 15, 2010, laid out the fees for services as an "executor" (here actually as Independent Administrator) the Bank proposed to charge for the administration of this matter via the "attached fee schedule". On the Bank's behalf, Ms. Novak sought that the parties (including the children) approve the written proposal (the Contract) and execute and return duplicate copies of same. This all three parties did.[2] The Bank, as it has admitted in writing since, from that moment forward in time became the fiduciary for all three interested persons and thus engaged in the Hopper Administration.

I.

Included as part of Exhibit "A' to the above referenced fee schedule agreement (given by the Bank to the Plaintiff and the children and accepted by all parties as part of the Contract) are two pages entitled "Estate Settlement Services/Fee Schedule-Texas". In addition to setting out the Bank's fee (a 2% fee on these instant facts) the pages of the Contract note that there are also (possible) attorney's fees and charges (by outside professionals) as separate, *a la carte* "expenses" of the Estate. In this part of the Contract, the Bank listed a group of "Estate Settlement Services" which "included"[3] sixteen different items. Among the "Estate Settlement

[2] Plaintiff signed and returned her copy of the Contract on April 27, 2010.

[3] The use of the term "included" apparently meaning that all of these services were to be expected to be performed, as applicable, but that other services might well also be offered as part of the "comprehensive" estate package purchased by Plaintiff and the children as well. *These services were to be performed by the Bank, per the plain terms of the Contract. No indication or reference was made that these "included" services were to be "farmed out" to third-party professionals, with attendant charges for such work to be paid as additional "expenses". "Legal representation" services, an expense of the Estate, were described as relating to "court" appearances and the*

Services" included were the following [which is an abbreviated and incomplete list of items included]:

- Locating financial records
- Gathering estate assets
- Safeguarding property
- Identifying and paying debts
- Collecting amounts owed to the estate
- Making decisions about tax deductions, asset valuations and distributions
- Managing and preserving assets
- Validating claims against the estate
- Paying taxes and other estate expenses
- Filing required estate and income tax returns
- Preparing necessary inventory or court accounting
- Remaining impartial to determine what to distribute to beneficiaries or trusts based on specifications in the will or state laws.

J.

In point of fact, Defendant Bank as IA has failed miserably as to performing even its (threshold) agreed specific and listed "Estate Settlement Services" – in virtually every one of these

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oversight of "legal maters". That reference did not reference any of the "Estate Settlement Services" listed elsewhere on the same page of the document.

categories of service. Enumerating just a few of many examples of such failures: despite complete access, the IA has failed to gather the financial records or the assets stored at a warehouse to which the IA had complete access. Plaintiff offered access to all records at her home, but the IA never came to review such records. Not only has the IA not safeguarded the Estate's properties itself, it has sought wherever possible to foist that duty onto Plaintiff (and all costs attendant thereto). It has not properly collected amounts owed to the Estate. Further, as Exhibit "B" hereto reflects, the IA has not yet (more than a year and a half after Decedent's death, and a year "plus" since qualifying as IA) made decisions about tax deductions, basis allocations or prepared the required estate tax returns as yet – despite very near-term impending deadlines for same. Nor has the IA presented any analysis to the beneficiaries of its apparent (but not documented) decision between (a) electing out of the federal "estate tax regime" and into the "carryover basis regime" (which seems to favor the children but disfavor the Surviving Spouse because of basis allocation), or (b) filing the federal estate tax return and payment of estate tax (which seems to favor the Surviving Spouse but probably disfavors the children). On top of those significant failures, the Bank has neither properly managed nor preserved assets, nor paid bills timely when due (even jeopardizing assets under administration by virtue of such non-payment of insurance, security services and the like). Indeed, it has also let some very valuable assets, such as certain stock options, evaporate and become worthless by the failure to timely exercise same – even when these options and the contract(s) granting same had been repeatedly brought to the Bank's attention, in writing, by Plaintiff herself. The Bank has also not

properly handled claims nor properly prepared the necessary Inventory (see *Complaint* filed by Plaintiff on June 30, 2011).

K.

In addition, as to the important duty of "impartiality" (see Contract) the Bank did not contemporaneously nor timely inform Plaintiff of the apparently many questions being raised, and meetings it was having, with the children concerning their questions/issues about the administration of the Estate and the characterization of property. Failure to address these issues with transparency and celerity as to the children and the Surviving Spouse, has led to enmity and distrust among what was a blended family, with an inability on the part of everyone to tell what problems were real, and what problems were created by the Bank's refusal to do its duties and responsibilities it accepted – and do them timely and impartially.

L.

Further, the Bank refused to provide Plaintiff for almost a year with the routine monthly administration statements that it generates in every estate, complaining that Plaintiff (who at the onset of the Hopper Administration had millions of dollars of assets under administration by the Bank) "asked too many questions." This had the practical effect of concealing from the Plaintiff the ways in which the assets under administration were being (mis)spent, that is, lavishly upon the Bank's counsel for work that should have been done by the Bank, and upon (i.e., directly to) the

children's lawyers[4], even though the children had already been distributed millions of dollars by the Bank. All of this left Plaintiff in the position of not knowing what creditors, bills and supposed "expenses" of administration the Bank was allowing and paying. Thereafter Plaintiff was left in the dark: unable to know whether (and when) the Bank was paying creditors or administration expenses that were proper or not, or making payments that were in fact to hinder Plaintiff's interests – against the Bank's duties to Plaintiff. The Bank has also failed to pay reasonable storage charges and the like regarding certain tangible personal property it has left unattended and has forced Plaintiff to hold for the benefit of the Hopper Administration – despite DEMAND for payment of storage charges by Plaintiff.

M.

Additionally, in breach of its agreed and statutorily mandated duties, the Bank failed to give the required statutory notice to a major secured creditor of the Estate, even though the mortgage documents were provided to the Bank shortly after the initiation of the Hopper Administration. Further, even after having had this failure brought to its attention by Plaintiff, the Bank has for months simply "written" to the creditor rather than giving the required statutory notice. This secured creditor holds a mortgage secured by a Deed of Trust on the Homestead in an amount of approximately One Million, Two Hundred Thousand Dollars ($1,200,000.00). To this date, the parties still do not know whether the creditor will elect "matured and secured" or "preferred debt and lien." Thus it is still unknown, almost 20 months after Decedent's death, whether this very large

[4] By contrast, Plaintiff's attorneys have been paid directly by Plaintiff herself.

amount is to be paid as a matured secured claim to be paid in the due course of administration, or whether the creditor will elect preferred debt and lien. This admitted (in writing) failure to perform even the most basic function of an Independent Administrator, **with respect to a debt in the amount of approximately $1,200,000.00**, has created substantial uncertainty and cause for controversy between Decedent's children, who inherit Decedent's one-half of the Homestead, (subject to Plaintiff's right to exclusive use and possession thereof), and the Plaintiff herself – the owner of the other half in fee. For further example of its inadequacy at this Estate's administration, the Bank has yet to determine for the Estate a question of this great magnitude: Will there be a long term loan on the Homestead, or must it (the $1,200,000.00) be paid now? No clear answer has been given yet to Plaintiff or the children. This failure, standing alone, 20 months in, illustrates the complete lack of diligence by the Bank.

N.

In short, despite inducing Plaintiff to hire the Bank in April of 2010, based on its repeated representations and promises that it was a "professional" in the estate administration field, and even putting in writing to reassure Plaintiff on that score that "*. . . there is security in the knowledge that professionals will handle all estate settlement responsibilities*", the Bank while supposedly acting as Plaintiff's fiduciary – has utterly failed to live up to those responsibilities which it vouchsafed it would be able to do timely, properly, impartially and in accordance with law.

O.

The Bank has breached its fiduciary duty as Independent Administrator to all parties per its failure to timely perform the contractual and fiduciary duties it agreed to perform as per the referenced Contract. Additionally because of (to name a few) delay, indecision, failure to act, mismanagement and sheer laziness (only a few examples of which are set forth above), the Bank has created a whole host of problems for Plaintiff. Instead of the Bank leading the administration, the Bank by its dithering has cost the Plaintiff and the children a fortune. While Plaintiff was aware under the Contract that the Bank was allowed to use professionals where "necessary" for Court appearances and the like, the Bank has also further breached its obligation to Plaintiff and the (others) Defendants, all parties to the Contract, by attempting to shift the normal tasks of administration (and the economic burden of those tasks)[5] onto the shoulders of outside professionals, without ever really doing the work of administration itself – as it should have done and performed under the Contract. The net effect of this is for the Bank as IA to charge a 2% fee to the Estate for all the "Estate Settlement Services" described in the Contract – all while shifting the actual work onto the shoulders of professionals who charge separately, *a la carte*, for their work. The IA then intended (and did) bill not only the Estate – but even charged/allocated against the Plaintiff or her property under administration– for the cost of those professionals. The Bank did this, even though the Bank, to induce Plaintiff, originally promised her that no fees would be charged to her share of

[5] Thus leaving the 2% fee to be charged against the Estate's millions as essentially "pure profit" to the Bank.

the assets under administration, and that all of her assets under administration would be immediately turned over to her, free of administration and cost.

P.

If the Bank truly had the skills in estate administration as advertised, and set forth in the Contract, and employed them as to this administration, such burden-shifting would never have occurred. In any event, it is wholly improper and a breach of fiduciary responsibility and duty to engage in such "double-dipping". This is a classic "bait and switch" technique as practiced by the Bank as a huge national institution against the interests of its clients. In this same vein, in point of fact, the Bank has effectively lied to Plaintiff about its qualifications (given the individuals and their capabilities with which it actually chose to staff this administration) in this area and has proven itself grossly incompetent and unwilling to timely and professionally administer the Estate. For another example, the Bank has never even gone in (despite having complete access to Decedent's papers at his offices) and timely even gathered up the papers of the Estate from Decedent's office, examined same, set up schedules to insure timely exercise of the numerous stock options the Estate had, etc. Within the last few days, for example, the Bank as IA has allowed bills to be unpaid: which bills related to providing security for Estate property *and* the Estate business records stored at that warehouse where Estate papers and property are stored, as well as for storage of property under administration. This was omitted to be done despite written warnings from Plaintiff to pay same and despite having over $3 million in cash or cash equivalents on hand in the Estate to fund the relatively paltry costs of such security, insurance, storage charges, and the like.

Q.

Plaintiff was also induced into entering the Contract by the Bank based on certain other promises by the Bank. As noted above, among those promises made was that the full cost of the administration of the Estate would be borne exclusively by the Estate (i.e., the Decedent's separate property and the Decedent's one-half of the community property – this not including Plaintiff's property under "administration") – and not to borne in any way by the Plaintiff. This representation and promise was made directly to Plaintiff by representatives of the Bank both orally and in writing, and reconfirmed in writing since that promise was made. Despite these promises, the Bank has of late, waffled even on this clear and binding promise, (supported by the consideration of the execution of the Contract by Plaintiff herself), under pressure from the children, Defendants Wassmer and S. Hopper. Such waffling has cost Plaintiff time, trouble and injury (i.e., she has been economically damaged) by having to deal with this "newly arisen issue" and have her attorneys address this – when in fact the Bank made absolute promises in such regard more than a year ago and has reconfirmed them since.

R.

Nor did the Bank act with appropriate diligence in marshalling the assets under the Bank's control and administration. Five months after its appointment as Independent Administrator, and almost eleven months after Mr. Hopper's death, the Bank had still not taken possession of a number of community assets such as securities accounts, choosing instead to simply leave them in the Decedent's name. This failure to act prudently by the Bank – all while the Bank owed Plaintiff an

unquestionable fiduciary duty (as its counsel has since admitted), as well as failure as to the duty of impartiality, all were to Plaintiff's damage.

S.

Another failure of administration by the Bank (as well as the Bank's lack of constancy and forthrightness), is illustrated below. During the first year of the Hopper Administration, the Bank represented to Plaintiff that she need only identify *orally* those items of tangible personal property which were her separate property. Plaintiff did so right away. Months passed. Then, with only a few days left before the Bank filed its Inventory (a short enough time that compliance was impossible) the Bank announced that since the Plaintiff had allegedly not provided "written proof"[6] of Plaintiff's separate property interest in those items of tangible personal property (paintings, Christmas china and the like) all such items would be listed in the Inventory as "community property". The Bank never had previously told Plaintiff that she would be required to provide written proof.[7] Thereafter, the Inventory was filed by the Bank, reporting such items as community property, notwithstanding that Plaintiff had explained orally that they had been birthday and Christmas presents (and the like) to her from her husband (and others) and her own family inheritances. Plaintiff thereafter, in response to this sudden change of position by the Bank, began collecting written proof of such items separate property nature. This proof included letters from an

[6] No explanation was ever given by the Bank as to what constituted "proof" in the Bank's eyes, how "sufficiency" of any "proof" was to be determined, etc.

[7] Plaintiff asserts this conduct by the Bank was a direct result of pressure from the children (through counsel), which pressure rendered the already impotent Estate administration completely immobile. This is a total failure of logic, impartiality, and frankly, backbone, on the part of the Bank.

art dealer who remembered Decedent buying four paintings as birthday and Christmas gifts, old family pictures of a bedstead and headboard that had been in Plaintiff's own family prior to her marriage, etc. All these were small items in a relative (economic) sense (given the size of the Estate), but critically important and dear to a Surviving Spouse.

T.

Once such written proof was furnished to the Bank by Plaintiff, emails produced by the Bank at Plaintiff's demand, show that the Bank and its counsel determined that such proof was in fact sufficient to show the items' separate property nature. But the Bank then thereafter consulted with the children's attorneys, who as set forth elsewhere herein, were being paid by the Bank from Estate assets under administration – even though the children had already been distributed millions of dollars of liquid assets by the Bank. Not surprisingly given the step-childrens' animosity against Plaintiff, the children's attorneys "objected",[8] and thereafter the Bank refused to move forward to conclusion of these easy matters[9] – even where there was no contra-indication ever given to date that these small items were anything other than Plaintiff's separate property.

U.

As set out above, Plaintiff owned a one-half community interest in the community homestead which she and Decedent had purchased together and upon which there is a mortgage lien with Deed

8 Plaintiff has never seen any contra-proof to her writings delivered to the Bank confirming the separate property nature of these few items – only non-specific "objections" – whatever these are.

9 Indeed, Plaintiff has seen initial correspondence from the Bank admitting it wholly agreed as to the separate nature of certain of Plaintiff's items – but, as usual, the Bank did nothing but wring its hands.

of Trust (in favor of the secured creditor referenced above). As a result of the Bank's failure to give proper notice to the secured creditor holding the mortgage on the Homestead, and since Plaintiff expressed to the Bank that the Bank's appraisal for the Homestead for tax purposes appeared to ignore substantial material defects in the house (e.g.; need for a $150,000 roof; a slab that was seeping water and warping the hardwood floors, the repair for which necessitates removal of all furniture to fix and repair the floors, etc.). Plaintiff is therefore understandbly uncertain as to the true amount of equity in the Homestead (also the "Residence" or "Robledo").

V.

So far as Plaintiff is aware, it is unquestioned by Bank and other Defendants (and without question as a matter of law) that as of the moment of death, Plaintiff's one-half thereof (of Robledo) was vested in the Plaintiff, and that Decedent's one-half thereof is subject to the Surviving Spouse's Homestead interest therein, pursuant to the Texas Constitution. [Tex. Constitution, Art. 16, § 52] Under the Texas Constitution, and under the Texas Probate Code, § 284, this Homestead may not be partitioned while used as the Plaintiff's home/residence.

W.

Plaintiff has at all times since lived continuously in said Homestead, has not abandoned same, and indeed has repeatedly evidenced orally and in writing to third parties and including to all Defendants that she intends to occupy the Homestead for the rest of her natural life.

X.

Notwithstanding the foregoing and the Texas Constitution, Defendant Bank, also in concert with the other Defendants, has taken the position that Plaintiff's Homestead is subject to being part of an overall grand "partition" of assets. The Bank, in favor of the children (who inherit virtually all of the Estate, and to whom the Bank is contractually bound to look to for its entire fee), has adopted the position that the Surviving Spouse must involuntarily "buy" her Homestead in Robledo. Per the Bank's plan, this is to be accomplished by the Bank "partitioning" the Estate's one-half interest in Robledo (which is already subject to the Surviving Spouse's Homestead rights) to the Surviving Spouse, and partitioning to the children an amount of the Surviving Spouse's assets under administration equal to the value of a one-half interest in Robledo.[10]

Y.

To be clear, even if this real estate at Robledo was not the Homestead, partition of which is forbidden both by the Constitution and the TPC, it would still be a non-prorata partition of community property, which is forbidden under Texas law unless specifically requested of the Court by the Surviving Spouse. TPC §385. The Surviving Spouse (Plaintiff) has never asked the Court for a partition of community property under TPC § 385, the only Code section giving the Court power to partition community property between the Surviving Spouse and the children – which section may not be invoked by the Independent Administrator or the other heirs (the children). Even more

[10] Of course if one is forced to pay for the "homestead right", it is hardly a "right". Indeed it would be no "right" at all, the way the Defendants would have it.

startlingly, the children and the Bank have advanced the position through written memos sent to Plaintiff, that the Decedent's children should not have to "suffer" having their interest in Robledo (that is Decedent's community property one-half) being subject to the Surviving Spouse's Homestead. The Bank and the children have told (threatened) the Plaintiff, in writing, that they have the power to, and are required to:

1. Non-prorata partition any and all of what was, immediately prior to death, community property (both the Surviving Spouse's property under administration and the Decedent's share thereof) between the Surviving Spouse and the Decedent's heirs as the IA pleases without the Surviving Spouse's consent (even though the only section in the Probate Code [§ 385] providing for partition of community property expressly provides that it may only solely be invoked by the Surviving Spouse).

2. Non-prorata partition 100% of the fee interest in the Homestead to the Surviving Spouse. In exchange for this, even though the Defendants claim this not to be a partition, the Defendants have told the Surviving Spouse/Plaintiff that they would then involuntarily take from her other assets (which are under administration but not part of the Decedent's estate) in exchange for that 100% fee interest in the Homestead. All of this has been threatened by Defendants against Plaintiff even though she has stated in writing she does not want the fee interest in the Estate's share of her Homestead (i.e., she doesn't want to make such a forced trade or exchange). Furthermore, while the partition of the Homestead and the partition of what was community property is not allowable and therefore this should not be an issue, the

children (or heirs) and the Bank have written to the Surviving Spouse to further intimidate her into reaching settlements with the children which she does not want. In those writings, both the Bank and the children, through their attorney (paid for by the Bank from funds under administration) stated that in that unwanted exchange/partition, no value would be assigned to the Surviving Spouse's Homestead rights. Thus the children and the Bank would not only force the Surviving Spouse to buy her Homestead, they would force her to buy the Decedent's one-half fee interest in the Homestead at the full unencumbered fair market value thereof, undiminished by the burden of the homestead rights which she is already granted under the Texas Constitution. This is particularly bizarre, since (a) neither the Independent Administrator nor the Court have the power to partition what was community property without the Surviving Spouse's specific request to the Court (which has never occurred), and (b) the Homestead is not subject to administration or partition in any event.

Z.

The Bank and the children have asserted that they can avoid the absolute prohibition upon partition of the Homestead, contained both in the Constitution (above) and in TPC §284, by claiming what they seek isn't "really a partition" since they would transfer Decedent's fee ½ interest in the Homestead to the Surviving Spouse, and simply make/force the Surviving Spouse to give up other property already belonging to the Surviving Spouse and only subject to administration, equal to the full value of the Decedent's one-half of the Homestead (and unreduced for the value of the Homestead). The Bank has thus threatened to breach its fiduciary duty (and thrown impartiality out

the window) as to the Plaintiff, and make inappropriate and prohibited use of the Plaintiff's property under administration – allegedly to keep the children from having to "suffer the burden" of having their step-mother exercise her Constitutional right to her Homestead. To do so, the Bank and the children/heirs must ignore and violate the express terms of the Constitution, and §§ 284, 373[11] and 385 of the TPC (respectively, no partition of homestead, partition of Decedent's estate only and partition of community property only by request to the Court by the Surviving Spouse). The effect of the extraordinary position/condition the Bank has sought to impose against Plaintiff, if universally applied, would be that every widow would have to "buy" her homestead. Here Defendants would accomplish this condition, by the Bank taking from the widow Hopper her share of other community property (which was only subject to administration by the personal representative for the sole purpose of paying appropriate creditors and expenses of administration). This rule, if truly a rule of law, would gut most widows' liquidity forcing them to use all of their share of the community property savings remaining to a widow after her husband's death to buy the fee interest in the homestead property from her husband's children or other beneficiaries, or if she was not willing to lose all of her savings, then she would be required to forego her Constitutionally protected homestead rights.

[11] As the Court well knows, and the Bank must well know, (given its years of experience as a fiduciary), § 373 of the TPC is inapplicable to partition what was previously community property as between the Surviving Spouse and the heirs, since it is applicable only to the "Estate" (meaning the Decedent's one-half of the what was formerly community and the Decedent's separate property). Instead, § 373 may only be used to partition the Decedent's Estate between and among the Decedent's heirs, devisees, or legatees (here the Surviving Spouse is not an heir legatee or devisee of the Decedent on the instant facts with respect to the property at issue and certainly not with respect to the Homestead).

It is this fundamental right to possession of her Homestead, unfettered by such novel claims and arguments, that Plaintiff seeks to have this Court declare against all Defendants, and in favor of Plaintiff and her Homestead's rights.

A.A.

Plaintiff would also show that the Bank concealed from her, by not furnishing copies of monthly account statements for almost a year, exactly what and whom the Bank was paying directly from assets under administration. For example, documents obtained just prior to this Petition being filed, showed fees of over $121,000 for one of the children's attorneys for one approximate five-week billing period, were paid to the attorneys by the Bank for the children – all while Plaintiff's legitimate reimbursements promised her by the Bank were never paid her. These payments have come and continue to come directly from the assets under administration (which include the Surviving Spouse's assets under administration) even though the children (each a Defendant herein), for whose sole benefit all of this false analysis described above was postured, have already had millions of dollars distributed to them directly from the Estate.

B.B.

The Bank's misdeeds against Plaintiff, its breaches of loyalty, fiduciary duty, impartiality, and the like, are nowhere near concluded by the sad litany above. But the Bank was not content to merely mishandle and mismanage Plaintiff's property and her rights to same as set out above. The Bank wanted to exercise even more control over Plaintiff, to her detriment and to its benefit. Novak has admitted that she for the IA, a major international banking organization, was in touch

with its own "banking side" personnel in regards to personal funds/securities Plaintiff had on deposit at the Bank during a period that the Bank was aware that Plaintiff had significant questions as to the handling of the Estate. Plaintiff avers upon information and belief the IA (through Novak) caused the "banking side" to hold on to her accounts/investment funds on deposit and slowed them from being transferred immediately to another outside banking/brokerage institution, even after the "banking side" had received Plaintiff's direct written instructions to do so. Plaintiff couldn't understand the delay in this transfer, until Novak made her admission. Again, this amounts to self-dealing.

C.C.

Prior to filing the Inventory, the Bank repeatedly assured the Plaintiff that it would pay from the assets under administration, including the Decedent's Estate, various costs of support of the Plaintiff, particularly with respect to costs and expenses associated with the Homestead (Plaintiff's Residence). But the Bank, after consulting with the children's lawyers, has now refused to pay (or reimburse to Plaintiff) any of those costs incurred. Further it has wholly failed to fix and pay the family allowance for the support of the Surviving Spouse for the year following the Decedent's death. This is an intentional breach of TPC § 286(a). As noted above, the Plaintiff Surviving Spouse had relatively little separate property at the Decedent's death, only certain items of tangible personal property such as a piano, a few paintings, Christmas dishes and the like.

D.D.

In addition to the failure by the Bank to fix and pay the family allowance, etc., set out above, the Bank has also willfully failed to reimburse and pay Plaintiff other significant sums. As set out elsewhere herein, Plaintiff is currently owed reimbursements of more than $60,000.00 which she has advanced, at the Bank's behest and urging, in favor of the Estate and Hopper Administration, generally. These funds were promised to be repaid her immediately by the Bank, but to date have not been so paid. Equally outrageously, in June 2011, Novak confirmed to Plaintiff that a payment of approximately $85,000.00 was to be paid to her immediately as to a cash buy-out from "Symantec" regarding an escrow payment the Bank had just received. This sum has never been paid, despite the direct promise to Plaintiff by Novak for the IA to pay same, that promise made in writing, on June 30, 2011. Plaintiff is also owed storage fees, demanded, but never properly paid her.

E.E.

As noted above, the Bank failed to give the required notice to the secured creditor which holds the mortgage on the Homestead, and to the best of Plaintiff's knowledge, still has not given notice once the error was discovered several months ago and even brought to its attention by Plaintiff. One of the principal complaints that the children (the largest heirs of Decedent) have about having to "suffer" having their ("remainder") interest in the Residence burdened by the Plaintiff's Homestead rights is that they will be involved in regular interactions with Plaintiff with respect to items such as monthly payments on the mortgage, etc. Accordingly to avoid this

conflict, the Independent Administrator should have, without regard to whether the creditor elected[12] matured and secured or preferred debt and lien, determined that it was/is in the best interest of the Estate (the property passing to the heirs) to pay such mortgage in its entirety prior to maturity. Thereupon, the mortgage should have been paid in full per TPC § 306(a)(2). The Bank having failed to take the proper actions, and then make and act upon such determinations, the Court should now determine and declare same and order same accordingly.

F.F.

Defendant Bank has committed both gross misconduct and gross mismanagement of the Hopper Administration (and against Plaintiff's interests) for the reasons set forth herein. Defendant Bank has also committed both gross misconduct and gross mismanagement of the Hopper Administration by refusing to disclose material facts known to it and for the reasons set forth herein.

G.G.

Defendant Bank has committed both gross misconduct and gross mismanagement of the Hopper Administration (and against Plaintiff's interests) by failing to collect and to take into possession the record books, title papers, and other business papers of same and to act prudently, and as a fiduciary with impartially toward Plaintiff, in relation to all of same, all as set forth herein.

[12] Of course, such election has never occurred, as Bank never gave the statutory notice to the creditor.

H.H.

Plaintiff reserves the right to set out even more such failures, breaches and fraud, etc., by the Bank, via amendment or supplement hereto. All factual allegations set forth in any Court or elsewhere here are incorporated by reference in support of all Counts herein. Plaintiff reserves the right to amend or supplement as may be required or advisable.

III.

COUNT 1 - DECLARATORY JUDGMENT

A.

All the factual allegations referenced elsewhere in this entire Petition are incorporated by Plaintiff by reference and realleged herein in support of this Count.

B.

This Count seeks judgment against all Defendants pursuant to the Texas Uniform Declaratory Judgment Act ("UDJA"), Texas Civil Practice & Remedies Code § 37.001 et seq. Plaintiff and Defendants are legal or natural persons having an interest in the matters set forth herein that would be affected by the declarations sought herein, as provided under Texas Civil Practice & Remedies Code, § 37.006 (a). Plaintiff also seeks all legal fees and expenses as allowed under law and set forth elsewhere in this Petition, all of which are incorporated by reference herein in support hereof.

C.

An actual and justiciable controversy(ies) exists and has arisen between the Plaintiff and Defendants. Plaintiff contends and seeks declaration against these Defendants, and specific orders

from this Court as follows as to each of the matters below. Plaintiff further seeks judgment against Defendants pursuant to the UDJA declaring the rights, status and other legal relations of Plaintiff and Defendants regarding the rights and obligations hereunder of the parties, one to another, and to have this Honorable Court Declare the rights and legal relations in respect to any and all interests of the parties in relation to the Contract, the Estate, the Homestead, the Hopper Administration and all its business affairs and dealings with the parties, all matters and rights to which Plaintiff is entitled, and to Declare (generally) the parties' respective obligations and rights as a result of and arising out of these matters described herein between the parties generally, all as follows:

1. That the residence of Decedent Max Hopper and Jo Hopper ("Surviving Spouse"), located at 9 Robledo Drive, Dallas, Texas, was the community property of Decedent and Surviving Spouse prior to Decedent's death.
2. That immediately upon Decedent's death, Surviving Spouse retained and was fully vested in the fee simple title to her undivided one-half of the Residence, and Decedent's undivided one-half thereof passed to his children, Defendants Stephen and Laura.
3. That since the Residence was their community homestead, and since Surviving spouse has elected to maintain the Residence as her Homestead, Surviving Spouse has the exclusive right of use and possession thereof, and the Defendant children's interest therein is subject to her exclusive right of use and possession.
4. That the Homestead is not subject to administration, and no party may be granted a

partition of the Homestead against Plaintiff, as long as she maintains it as her Homestead.

5. That to the extent not delivered prior thereto, upon closing of the administration of the Estate of Max D. Hopper, the IA must and shall release and deliver Plaintiff's assets, previously subject to administration, remaining after the appropriate payment of debts, allowances, and expenses, to the Surviving Spouse.

6. The IA shall not charge against the Surviving Spouse's share of the assets being administered, any value attributable to the Surviving Spouse's right of sole use and possession of the children's one-half of the Residence and any tangible personal property in connection therewith, as a matter of law, as to the Homestead.

7. That all exempt property pursuant to TPC § 271 be set apart for the sole use and benefit of the Surviving Spouse.

8. That Plaintiff is entitled to full and exclusive use, possession and enjoyment of the Homestead and to maintain her Homestead interest at Robledo without interference from the Defendant children or Defendant Bank for the remainder of her natural life (or until she ceases to occupy the Homestead and has affirmatively and deliberately abandoned same).

9. That the Bank should immediately, without further delay, fix and pay to the Plaintiff a family allowance for the Surviving Spouse, as mandated by law, including but not limited to all costs of the Homestead, its maintenance, upkeep, insurance, taxes, and

mortgage payments thereon.

10. That the Bank should determine, pursuant to TPC § 306(a)(2) that it is in the best interest of the Estate to pay the Homestead mortgage in full prior to its maturity and pay such amount in full pursuant to the terms of such Section.

11. That the Surviving Spouse has not requested of the Court a non-prorata partition of community property between the Surviving Spouse and the Decedent's Estate as set forth in § 385 of the Texas Probate Code – nor has the Surviving Spouse requested a partition of any kind of the Homestead.

12. That the items of tangible personal property previously identified by the Plaintiff to the Bank (and by the Bank to the children) as Plaintiff's separate property are in fact Plaintiff's separate property.

IV.

COUNT 2 - BREACH OF CONTRACT

A.

All the factual allegations referenced elsewhere in this entire Complaint are incorporated by Plaintiff by reference and realleged herein in support of this Count.

B.

The actions described above constitute multiple breaches of the Contract between Plaintiff and Defendant Bank. Plaintiff made the Contract, Exhibit "A" hereto, as did the children, with Defendant Bank. The Bank did not honor and has not kept the terms and conditions of the Contract

and has failed to perform under the Contract. Defendant Bank has breached its Contract with the Plaintiff and has caused Plaintiff to pay, or sought to charge Plaintiff, sums it should not have ever attempted to bill Plaintiff and to charge/bill as to matters which should never have occurred in the first instance. Bank has also specifically failed to timely do the tasks which it is required to do and which it promised to do in connection with the Estate – upon which promised performance the fee schedule in the Contract was agreed to in the first instance. These failures have cost the Hopper Administration money and have also cost Plaintiff money – thus have additionally damaged Plaintiff, by Plaintiff having to deal with the aftermath of these errors and hire her own attorneys to try to "clean up after the Bank", all at her great (but necessary – given the IA's conduct) expense and detriment.

C.

As a result of these numerous breaches of Contract, Plaintiff has been damaged by the Bank in an amount in excess of the minimum jurisdictional limits of this Court, for which Plaintiff now sues. Plaintiff also seeks all attorney's fees, interest and costs as set forth elsewhere herein, which are incorporated by reference.

V.

COUNT 3 - FRAUD/FRAUD IN THE INDUCEMENT

A.

All the factual allegations referenced elsewhere in this entire Petition are incorporated by Plaintiff by reference and realleged herein in support of this Count.

B.

Defendant Bank both before it was hired and during its tenure as IA made representations to Plaintiff as set forth above in order to induce Plaintiff to change position in reasonable reliance upon same and enter into the above-referenced Contract to hire the Bank and to act in certain ways (e.g., pay certain bills of the Estate on the express understanding and assurances she would be "reimbursed" – which she has not been). As set forth above, Defendant Bank knew at the time it entered into the Contract that it (given the personnel with which it chose to staff this Estate's administration) did not have the capabilities advertised and promised to Plaintiff. Nor did the IA intend to itself directly provide the level of personnel and support necessary that it represented it would without the need for enormous efforts by "outside professionals" it sought to include to perform tasks it should have and agreed to complete properly for one unitary fee[13] -- such that these tasks could be accomplished timely in a complex estate such as this Estate. Defendant Bank engaged in fraud and misrepresentations and simply wanted to "snare" Plaintiff as a customer of the Bank and thus "get the business". It did so knowing full well that once the Bank was named as Independent Administrator with the assent of Plaintiff, it could then have a free rein in dealing with the Estate however it chose and using as many outside professionals as it wished at whatever cost it determined to allow – all essentially free of judicial supervision. As Plaintiff now clearly perceives and understands, this was the Bank's plan from the get-go. Certainly had the Bank advised her of the

[13] That single fee was to be paid by the Estate only (and not Plaintiff or her community interest managed by the Bank). Likewise, Plaintiff understood the legal fees in connection therewith were to be paid in the same fashion: by

truth, she never would have changed positions and allowed the Bank to become Independent Administrator – by her agreement, or at all. She would have absolutely opposed such an oppressive and incompetent regime as has been imposed upon her and her interests by this trickery and deceit.

C.

The Defendant Bank knew or should have known its statements/ ongoing representations and conduct as described above and herein generally, were false, deceptive and misleading when made, yet it made them (repeatedly) with the intent, design and purpose of deceiving Plaintiff: in order to first induce Plaintiff to enter into the Contract, then concomitantly allow Defendant Bank to gain control over the Estate and its huge purse, and then further, to trick Plaintiff into paying bills on the promise of reimbursement, but not paying her back – to gain financial leverage over Plaintiff so that she could not oppose the Bank's wrongful conduct for fear of never being reimbursed.[14]

D.

As a result of the Defendant Bank's conduct as set out herein, the Defendant Bank is obligated to and should be ordered to disgorge any and all fees, expenses and costs paid out by it, or to, the Defendant Bank itself.

E.

As a result of this Defendant Bank's conduct (as set out above) and fraud/fraud in the inducement, Plaintiff has been damaged in an amount in excess of the minimum jurisdictional limits

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the Estate and not by her "managed community interest".

[14] Of course that's exactly what's happened to date.

of this Court, for which she now sues and seeks to impose liability. Plaintiff also seeks all damages, exemplary damages and attorneys' fees and costs as set forth elsewhere herein and incorporated by reference herein.

VI.

COUNT 4 – ACTION FOR REMOVAL

A.

All the factual allegations referenced elsewhere in this entire Petition are incorporated by Plaintiff by reference and realleged herein in support of this Count.

B.

Pursuant to Texas Probate Code §149C, Plaintiff seeks the removal of Defendant Bank as Independent Administrator of the Estate for at least, without limitation, the following reasons:

1. The Bank has failed to properly and timely file an inventory – all as set out hereinabove and more specifically as set forth in the *Complaint* filed June 30, 2011 by Plaintiff. The errors in the Inventory as filed were pervasive, systematic and deliberate. The Inventory as filed is not an Inventory worthy of that name and indeed was described by Plaintiff's own counsel, as merely a "work in progress". Such a document with all the failures alleged in the *Complaint*, does not comport with the requirements of the Texas Probate Code and thus amounts to a failure to timely file a proper inventory under TPC §149(C) – which "Inventory" in the state it was actually filed and with the admissions of the Bank's legal representative – could not be properly sworn to, as the TPC requires.

2. The Bank has threatened the Surviving Spouse with action with respect to the Homestead and with respect to the Surviving Spouse's property under administration by the Bank but not part of the Decedent's Estate which exceeds both the authority of the Bank and of this Court, namely to partition the Homestead, and to take the Surviving Spouse's property under administration and give it to the children, requiring the Surviving Spouse to "buy" her Constitutionally guaranteed Homestead rights and a "taking" of the Surviving Spouse's property. In doing so, the Bank has shown and given good and sufficient cause that it should be removed as Independent Administrator herein.
3. The Bank has failed to honor its fiduciary duties to Plaintiff and breached, as well, its duty of impartiality and should be removed.
4. The Bank failed to give proper notice to a secured creditor holding a mortgage on the homestead of approximately One Million, Two Hundred Thousand Dollars, ($1,200,000.00). Even after this error was pointed out to it by Plaintiff, several months ago, Defendant Bank has failed, still, to give the required notice to the secured creditor.
5. Defendant has not fixed, and has refused to fix and pay a family allowance to the Surviving Spouse in the amount of her support.
6. As set out above, the Bank as IA misrepresented how and to who it would charge for its services. The IA further misrepresented the nature of the services and what additional charges would be incurred (e.g., for professionals such as attorneys) and whom it would seek to charge for such services. Plaintiff was specifically advised that she would suffer

no charges as a result of the Bank's services against her community property or any of her interests under the Bank's management under the course of the Hopper Administration. The IA has thus engaged in self-dealing and should be discharged.

7. The IA failed to produce timely Estate Settlement Statements until and only after Plaintiff had to hire counsel to demand same.
8. Reimbursements in amounts in excess of $60,000 have not been paid Plaintiff despite her expenditures of these funds on behalf of and at the behest of the Bank as IA and despite expenses and repeated representations by the IA that they would be repaid to Plaintiff forthwith. Additionally, promised funds from stocks have not been paid either; instead being wrongfully withheld by the Bank. Nor has Plaintiff been paid certain storage charges due her by the Bank.
9. As set forth in the *Complaint*, the IA allowed the expiration of options in regard to a company known as "Jamcracker, Inc.".
10. The IA also allowed the expiration of options in regard to a company known as "GT Nexus" – although later by the direct efforts of Plaintiff those options were retroactively reinstated. Nonetheless, the Bank did allow the options' expiration.

Plaintiff prays that the Court remove Defendant Bank as Independent Administrator hereof, and appoint a suitable person or entity to serve as the successor Independent Administrator hereof if there is a person upon whom the Plaintiff and the children can agree, or otherwise convert this administration to a dependent administration and appoint a suitable dependent administrator thereof.

Plaintiff seeks all its attorneys' fees and costs as allowed by law and prayed for elsewhere herein, which is incorporated by reference.

VII.

COUNT 5 – BREACH OF FIDUCIARY DUTY

A.

All the factual allegations referenced elsewhere in this entire Petition are incorporated by Plaintiff by reference and realleged herein in support of this Count.

B.

Defendant Bank owed (and has admitted it owes) fiduciary duties to Plaintiff, including, but not limited to, a duty of loyalty, a duty of utmost good faith, fairness and honesty, a duty of full disclosure, a duty of impartiality, etc. By its actions described above, the Bank, acting as IA, breached its fiduciary duties to Plaintiff.

C.

As a result of Bank's breaches of fiduciary duties, Plaintiff has been damaged in an amount in excess of the minimum jurisdictional limits of this Court, for which Plaintiff now sues.

D.

As a result of the Defendant Bank's conduct as set out herein, the Defendant Bank is obligated to and should be ordered to disgorge any and all fees, expenses and costs paid out by it, or to, the Defendant Bank itself.

E.

Plaintiff also seeks all damages, exemplary damages and as appropriate attorney's fees, interest and costs as set forth elsewhere herein, which paragraphs are incorporated by reference.

VII.

COUNT 6 – UNJUST ENRICHMENT

A.

All the factual allegations referenced elsewhere in this entire Petition are incorporated by Plaintiff by reference and realleged herein in support of this Count.

B.

In addition or in the alternative, and without waiver of the foregoing causes of action, Defendant Bank has been unjustly enriched by receiving (or charging or seeking to charge) certain expenses to Plaintiff in connection with work done on the Estate – for which Plaintiff should not be charged. Defendant Bank has held onto funds that were promised to be reimbursed to Plaintiff amounting to tens of thousands of dollars – more than $60,000 altogether. These funds were expended by Plaintiff at the urging, behest and agreement of the Bank as Estate-related expenses, and were promised by the Bank to Plaintiff to be promptly reimbursed to Plaintiff. Additionally, funds from stock totaling approximately $85,000 promised to be paid Plaintiff, have likewise been wrongfully withheld by the Bank. Defendant Bank has, in the meantime, been paying its attorneys' expenses in connection with the Estate: these attorneys' fees which have been actually paid, being upon information and belief well more than $200,000 to date. Defendant Bank has also

attributed/allocated much of this cost to Plaintiff. Effectively then, the monies withheld from Plaintiff due her as reimbursements, or direct transfer payments from funds received for her benefit from third parties, by the Bank, have gone, in whole or in part, to pay the Bank's attorneys without Plaintiff's permission or consent.

C.

As a result of Bank's actions, Plaintiff has been damaged in an amount in excess of the minimum jurisdictional limits of this Court, for which she now sues and seeks her damages from Defendant Bank. Plaintiff also seeks all damages, exemplary damages and as appropriate attorney's fees, interest and costs as set forth elsewhere herein, which paragraphs are incorporated by reference.

VIII.

COUNT 7 – MONEY HAD AND RECEIVED

A.

All the factual allegations referenced elsewhere in this entire Petition are incorporated by Plaintiff by reference and realleged herein in support of this Count.

B.

Defendant Bank acting as IA owes the Plaintiff in excess of $60,000 for money expended by Plaintiff on the Bank's behalf for the Estate and the Hopper Administration, this being money had and received from the Plaintiff to be paid by Defendant to Plaintiff.

C.

Plaintiff also seeks all attorneys' fees and expenses, interests and costs to be paid out of the Estate, or charged against Defendant Bank, all as set forth elsewhere herein and incorporated by reference.

XI.

COUNT 8 – EXEMPLARY DAMAGES

A.

All the factual allegations referenced elsewhere in this entire Petition are incorporated by Plaintiff by reference and realleged herein in support of this Count.

B.

Because Defendant Bank's actions were knowing, intentional, and in reckless and utter disregard for her rights, Plaintiff is entitled to exemplary damages in an amount to be determined by the trier of fact against the Defendant Bank, plus her attorney's fees and costs – which requests elsewhere herein, are hereby incorporated by reference.

XII.

Attorneys' Fees, Interest and Costs

A.

All the factual allegations referenced elsewhere in this entire Petition are incorporated by Plaintiff by reference and realleged herein in support of this claim.

B.

Further, by reason of Defendant Bank's conduct and the matters alleged elsewhere herein, and pursuant to the Texas Civil Practice and Remedies Code, §37.001 et seq., and/or §38.001 et seq., and/or Texas Civil Practice & Remedies Code §134.005, or, alternatively, other applicable law, or in equity, Plaintiff is entitled to have and recover of and from Defendant Bank, her reasonable attorneys' fees incurred in connection with disputes concerning the Contract, Declaratory actions, and the other causes of action (as appropriate and alleged by law) asserted by Plaintiff herein. All notices and demands as required by law for such fees and costs have been or are being given. Plaintiff seeks a reasonable sum for such attorneys' fees and costs; or if this matter requires trial, such additional sums as are necessary to cover these attorneys' fees and costs, as well as, all reasonable attorneys' fees and costs in any Court of Appeals, for which each and every appeal taken (in the event of such an appeal(s)) Plaintiff seeks her attorneys' fees and costs, and for all of which reasonable attorneys' fees and costs Plaintiff sues and demands relief against Defendant Bank named herein.

C.

Plaintiff would further show that if she is allowed to recover under any theory pled in this cause against Defendant Bank, Plaintiff is entitled to all pre-judgment interest appropriate, at the highest rate allowed by law against Defendant Bank. Further, Plaintiff would show that if she is allowed to recover under any theory pled in this cause against this Defendant Bank, Plaintiff is entitled to all post-judgment interest as appropriate, at the highest rate allowed by law against this

Defendant Bank, from the date of judgment until the satisfaction of same. Plaintiff also seeks all costs of court and all other costs expended herein as are allowed at law or in equity.

D.

Further, pursuant to Texas Probate Code § 245, Plaintiff prays that the Court award her costs and expenses incurred by her in this removal action, including reasonable attorneys' fees and expenses, to be paid by Defendant Bank.

E.

Further, pursuant to Texas Probate Code § 149C(6)(d), Plaintiff prays that the Court award her costs and expenses incurred by her in this removal action, including reasonable attorneys' fees and expenses, to be paid out of the Estate.

F.

Plaintiff likewise seeks judgment for the same relief as to attorneys' fees, costs, interest, sought in Paragraphs "B" and "C" above, also as to Defendant children, jointly and severally, as to matters pled in connection with the Declaratory Judgment sought in Count "1" above under Tex. Civ. Prac. & Rem. Code §§ 37.001 et seq. and other applicable laws, to the same extent it is sought against the Bank in Paragraphs "B" and "C" above in this Attorney's Fees, Interest and Costs section.

XIII.

Conditions Precedent

All conditions precedent to recover under the claims asserted herein have occurred or been performed as to all Defendants herein.

XIV.

Jury Demand

Plaintiff respectfully requests a jury trial and a jury fee is paid in connection herewith.

XV.

(Second) Request for Disclosure

Pursuant to T.R.C.P., Rule 194, all Defendants are each requested to disclose, within thirty (30) days after service of this request, the information or material described in Rule 194.2.

Prayer

WHEREFORE PREMISES CONSIDERED, for these reasons Plaintiff prays that Defendants named herein be cited to appear and answer and that Plaintiff have Judgment and this Court award Judgment, against Defendants, jointly and severally, where and as may be appropriate, for the following (as applicable and appropriate):

a. A Declaratory judgment in all the particulars and generally as set out above, against all Defendants in favor of Plaintiff in all respects, together with all attorneys' fees and costs to the greatest extent allowed by law;

b. Judgment in favor of Plaintiff upon any of the theories, actions or causes of action

pled herein against any or all of the Defendants (as pled) for such sums as may be proved in open Court and for judgment for all other appropriate relief enumerated (whether generally or specifically) in this Petition and Prayer, or as may be appropriate in the premises;

c. Disgorgement of all fees charged or paid out by or to the Bank, plus all expenses and costs charged by Bank and paid out by, or to, the Bank;

d. All reimbursements, stock payments, escrow payments, storage charges, and all other sums properly due or owed Plaintiff promised by the Bank, or otherwise, be paid Plaintiff;

e. Removal of the Bank as Independent Administrator and appropriate Court orders thereafter, all as set out above;

f. All actual, consequential, and special damages; alternatively, relief for all Plaintiff's damages;

g. All exemplary damages as sought in the Petition (plus reasonable attorneys' fees and any costs in connection therewith)

h. Reasonable and necessary attorneys' fees, jointly and severally against Defendants (as may be appropriate), and if this cause requires a trial, for Plaintiff's reasonable attorneys' fees for the prosecution or defense of same; and, an additional sum or sums if this cause is appealed, all as specified more fully hereinabove;

i. Costs of suit or reasonable expenses as are allowed at law or in equity;

j. Prejudgment and post-judgment interest as allowed, at the highest rates allowed by law;

k. For such Declaratory and other orders and judgments affecting the obligations of each of the Defendants, jointly and severally, to Plaintiff and as to and to uphold the rights of Plaintiff and in favor of Plaintiff, as this Honorable Court may find appropriate under the circumstances; and

l. All other general and special relief, in law or equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

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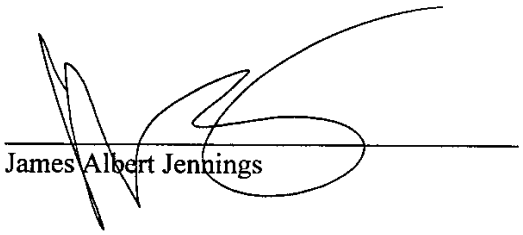
JO N. HOPPER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was delivered by Hand Delivery to Gary Stolbach and Melinda Sims, Glast, Phillips & Murray, P.C., 14801 Quorum Drive, Suite 500, Dallas, Texas 75254, counsel for Laura Wassmer and Stephen Hopper on this the 21st day of September, 2011.



James Albert Jennings

J.P.Morgan

April 15, 2010

Ms. Jo N. Hopper
9 Robledo Drive
Dallas, Texas 75230

Mr. Stephen Hopper
3625 North Classen Blvd
Oklahoma City, Oklahoma 73118

Ms. Laura S. Wassmer
8005 Roe Avenue
Prairie Village, Kansas 66208

Re: **Estate of Max C. Hopper**

Dear Jo, Laura, and Stephen:

During our recent communications, I promised to send you a letter in which I would set forth the financial terms upon which JPMorgan Chase Bank, N.A. would serve as independent administrator of the Estate of Max D. Hopper. Clearly, we are agreeing to serve on the basis of our standard fees for service as an executor of an estate, and will not be charging the fees that could be charged if we were follow the provisions of Section 241 of the Texas Probate Code which governs compensation for personal representatives who are under court supervision.

The fees we propose to charge are set forth in the attached fee schedule. We will be providing you with periodic financial reports that will show you the receipts and disbursements that are being collected and paid during the course of the administration of Mr. Hopper's estate, and these reports also will disclose any fee charges assessed and collected by JPMorgan Chase Bank, N.A. in its capacity as independent administrator.

I am here to answer any questions that any of you may have that develop during the course of the administration of Mr. Hopper's estate, and I would encourage you to ask those questions as they develop.

I am sending to each of you two copies of this letter with the attached fee schedule, and if you approve of the basis upon which we will provide these services, please sign the duplicate copy of the letter I am providing and return the duplicate copy to me in the postage paid envelope I am providing for that purpose.

Sincerely,

Susan H. Novak
Vice President

EXHIBIT
"A"

J.P.Morgan

I agree to your service as independent administrator on the basis you have outlined in this letter.

Date: April 27, 2010

JPMorgan

Estate Settlement Services

Fee Schedule - Texas

JPMorgan handles estates of all sizes and types–professionally and impartially. When you name JPMorgan Chase Bank, N.A. as personal representative, executor or agent for the executor, there's security in the knowledge that professionals will handle all estate settlement responsibilities.

With our competitive pricing schedule, fees are structured so that we provide cost-effective service.

Estate Settlement Services Include:

- Locating financial records
- Gathering estate assets
- Safeguarding property
- Notifying beneficiaries
- Identifying and paying debts
- Collecting amounts owed to the estate
- Determining cash flow needs and record maintenance
- Making decisions about tax deductions, asset valuations and distributions
- Managing and preserving assets
- Making decisions about which assets to sell (and when to sell them)
- Validating claims against the estate
- Supervising litigation, if necessary
- Paying taxes and other estate expenses
- Filing required estate and income tax returns
- Preparing necessary inventory or court accounting
- Remaining impartial to determine what to distribute to beneficiaries or trusts based on specifications in the will or state laws

Fees

JPMorgan's Estate Settlement Services are priced on the market value of all assets included on the federal estate tax return. These fees are not annual charges. Rather, they apply to the entire estate settlement period.

Account Administration Fee[1]

Market Value	Minimum fee: $10,000
First $2 million	3.0%
Over $2 million	2.0%

Property currently managed by JPMorgan, in a trust or an investment management account, will be subject to a discount before applying the Account Administration fee.

Additional fees[2] are charged for selected services and assistance, including:

- Tax services
- Alternative asset management
- Litigation regarding account assets

Co-fiduciary Services

When requested, JPMorgan Chase Bank, N.A. will be pleased to serve with an individual as a co-fiduciary. Compensation paid to the co-fiduciary will be in addition to our Estate Settlement fees. The same fee applies when JPMorgan Chase Bank, N.A. acts as agent for executors.

Legal Representation and Other Professional Services

Legal counsel is retained on every account we administer. The attorney represents the estate in court and oversees legal matters during estate administration. Attorney fees, as well as charges by other outside professionals, are an expense of the estate and are in addition to our Estate Settlement fees.

JPMorgan

Footnotes:

1. Property, insurance, annuities and qualified plans not collected by, or payable to JPMorgan Chase Bank, N.A. may be subject to a discount before applying the Account Administration fee.
2. Please refer to the Additional Services Fee Schedule for all applicable fees.

General Notes:

- Investments in JPMorgan Funds are made in Institutional, Select or Ultra shares, as appropriate, which have no sales load or 12b-1 fees. Investment management fees, administrative fees, distribution fees and other fees for services rendered are paid to JPMorgan Investment Advisors Inc. and its affiliates by JPMorgan Funds. Your advisor can provide copies of mutual fund prospectuses describing such fees, as well as the most recent average annual fees charged by the funds in which your assets are invested.
- Your advisor can provide you with separate fee schedules for additional services including, but not limited to, closely held assets, trust-owned life insurance policies and annuities, farm and ranch properties, oil, gas and mineral interests, real estate and tax services.
- Overdraft charges will be assessed based on the Prime Rate in effect as published by "The Wall Street Journal" Money Rates section.

JPMorgan Chase & Co. and its affiliates do not render tax advice. For tax advice specific to your situation, please consult your tax advisor. Estate planning requires legal assistance. JPMorgan Chase & Co. does not practice estate planning law.

Contact JPMorgan Distribution Services, Inc. at 1-800-480-4111 or visit www.jpmorganfunds.com, for a fund prospectus. Investors should carefully consider the investment objectives, risk, as well as charges and expenses of the mutual fund carefully before investing. The prospectus contains this and other information about the mutual fund. Read the prospectus carefully before investing.

JPMorgan Funds are distributed by JPMorgan Distribution Services, Inc., which is an affiliate of JPMorgan Chase & Co. Affiliates of JPMorgan Chase & Co. receive fees for providing various services to the funds.

Products and services, including fiduciary and custody products and services, are offered through JPMorgan Chase Bank, N.A. and its affiliates. Securities (including mutual funds) and certain investment advisory services are provided by J.P. Morgan Securities Inc., member NYSE, NASD and SIPC, or Chase Investment Services Corp., member NASD and SIPC. J.P. Morgan Securities Inc. and Chase Investment Services Corp. are affiliates of JPMorgan Chase Bank, N.A. Insurance products are provided by various insurance companies and offered through JPMorgan Insurance Agency, Inc. Products not available in all states.

Investment accounts and insurance products are not a bank deposit • Not FDIC insured • Not insured by any federal government agency • Not guaranteed by the bank • May lose value