

STATE OF WISCONSIN : CIRCUIT COURT : MILWAUKEE COUNTY

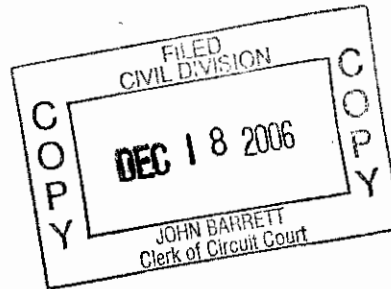
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GEOFF DAVIDIAN,  
Plaintiff,

v.

Case No. 2006-SC-25895

JP MORGAN CHASE BANK, N.A.,  
JEFF CHILDS, WILLIAM B. HARRISON,  
JR.  
AND JAMES DIMON,  
Defendants.



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**DEFENDANTS' ANSWER TO PLAINTIFF'S FIRST VERIFIED  
AMENDED AND SUPPLEMENTAL COMPLAINT**

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Now comes Quarles & Brady LLP on behalf of J.P. Morgan Chase Bank, N.A.,  
Jeff Childs, William B. Harrison, Jr. and James Dimon and answers the Plaintiff's First  
Verified Amended and Supplemental Complaint as follows:

**THE PARTIES**

1. Davidian is a 62-year-old citizen of Wisconsin. Davidian is an "elderly" Wisconsin resident as defined by Wis. Stats. § 100.264(1)(c) and a consumer for the purposes of Chapter 421 of Wisconsin Statutes. Additionally, Davidian may not waive or agree to forego rights and benefits under Chapters 421 to 427. (Wis. Stats. 421.106).

**Answer: As to the allegations contained in paragraph 1, admit that Wis. Stat. § 100.264(1) (c) defines elderly person as a person who is at least 62 years of age. As to the remainder of this paragraph, assert that defendants deny and put the plaintiff to his proof.**

2. On information and belief, Defendant JPMorgan Chase Bank, National Association (FDIC Cert: 628) is a National Bank. The Bank has corporate headquarters

at 1111 Polaris Parkway, Columbus, Ohio 43240. Chase Bank operates a branch at 111 E. Wisconsin Ave., Milwaukee, WI 53202. Chase Bank is successor by merger to Bank One, N.A. Chase Bank is a brand marketed by JPMorgan Chase & Co. The corporate headquarters of JPMorgan Chase & Co. are located at 270 Park Avenue, New York, NY 10017.

**Answer: As to the allegations contained in paragraph 2, admit.**

3. On information and belief, CHILDS is the manager of the JPMorgan Chase Bank branch at 111 E. Wisconsin Ave., Milwaukee, WI 53202.

**Answer: As to the allegations contained in paragraph 3, admit that Childs is an employee of JP Morgan Chase Bank, N.A. and currently holds the position of branch manager.**

4. On information and belief, DIMON is Chief Executive Officer and President of JPMORGAN CHASE & CO., with offices at 270 Park Avenue, New York, NY 10017. On information and belief, DIMON has been a Director since 2000 of JPMorgan Chase or a predecessor institution. On information and belief, DIMON was Chairman and Chief Executive Officer at Bank One Corp., where Davidian maintained a checking account prior to its merger with JPMorgan Chase in July 2004.

**Answer: As to the allegations contained in paragraph 4, defendants lack sufficient knowledge to either admit or deny where plaintiff maintained a checking account prior to July 2004 and therefore deny and put the plaintiff to his proof. As to the remainder of this paragraph, admit.**

5. On information and belief, HARRISON is Chairman of the Board of JPMORGAN CHASE & CO., with offices at 270 Park Avenue, New York, NY 10017. On information and belief, Harrison became Chairman of JPMorgan Chase on December 31, 2005. On information and belief, JPMorgan Chase & Co. operates Defendant Chase Bank as a retail brand, and operates a branch of The Bank at 111 E. Wisconsin Ave., Milwaukee, WI 53202.

**Answer: As to the allegations contained in paragraph 5, deny.**

#### FACTS

6. Plaintiff brings this verified amended and supplemental complaint, pursuant to Wis. Stats. § 802.09(4).

**Answer: As to the allegations contained in paragraph 6, admit.**

7. Davidian asserts direct injuries or losses totaling \$189.80 from a series of intentional, unauthorized and unjustified conversions of Plaintiff's funds, over Plaintiff's objections, through fraudulent representations and false advertising, and in breach of a

contract between The Bank and Davidian. This pattern of fraudulent representations, conversions of funds and breaches of contract occurred between July 11, 2006 and November 16, 2006.

**Answer: As to the allegations contained in paragraph 7, deny and put plaintiff to his proof.**

8. During a marketing presentation to induce Davidian to open a second account with The Bank, on June 1, 2006, Defendant Childs and Bank officer Bradley F. Diamond fraudulently asserted if there was ever a problem with a new account they would resolve it.

**Answer: As to the allegations contained in paragraph 8, deny and put the plaintiff to his proof.**

9. Diamond solicited Davidian's business through false advertising and fraudulent marketing material produced by The Bank.

**Answer: As to the allegations contained in paragraph 9, deny and put plaintiff to his proof.**

10. During the marketing session, Diamond asserted that The Bank offered personal service.

**Answer: As to the allegations contained in paragraph 10, deny and put plaintiff to his proof.**

11. Diamond presented Davidian with a blue and white marketing folder containing fraudulent representations in the form of marketing material by which Diamond solicited Davidian's business, inducing him to sign up for more Chase products that would allow customers to "Manage your money anywhere at anytime."

**Answer: As to the allegations contained in paragraph 11, deny.**

12. Diamond solicited Davidian's business and induced him through The Bank's fraudulent representations within Defendant's marketing material (such as the pamphlet identified as RM-001UPL), and oral statements meant to convince Davidian to sign up for a Chase Bank service that would allow Davidian to "Bank from your home or office" with "Free Chase Online" Banking." See Attachment G.

**Answer: As to the allegations contained in paragraph 12, admit that the attached document speaks for itself. Deny that any defendant undertook fraudulent action. Lack sufficient knowledge to admit or deny allegations about specific comments made in the conversation and accordingly, deny same and put the plaintiff to his proof.**

13. The folder contained the words "Member FDIC" on the outside cover.

**Answer: As to the allegations contained in paragraph 13, defendants lack sufficient knowledge to either admit or deny these allegations, and therefore deny and put the plaintiff to his proof.**

14. The marketing folder also contained a 36-page publication called "Account Rules and Regulations"<sup>1</sup> ("The Contract") which fraudulently represented that it is "A complete guide to the rules and regulations governing checking, savings, CD accounts and overdraft protection services." See Attachment A1.

**Answer: As to the allegations contained in paragraph 14, defendants admit that the attached document speaks for itself. As to the remainder of paragraph 14, deny and put the plaintiff to his proof.**

15. Page 1 of the Agreement states:

*This booklet is, in part, informative, but it also contains your agreement with us, sets forth your duties to us and defines certain elections that you made when you opened your account with us.*

*Your deposit account is subject to some basic rules that protect both you and us. This booklet explains these rules and should be read carefully by depositors."*

**Answer: As to the allegations contained in paragraph 15, defendants admit that the attached document speaks for itself. As to the remainder of paragraph 15, deny and put the plaintiff to his proof.**

16. Diamond also gave Davidian his personal business card bearing his direct telephone number. Diamond told Davidian to use the number to resolve any issues or to obtain financial "products" marketed by The Bank.

**Answer: As to the allegations contained in paragraph 16, defendants lack sufficient knowledge to either admit or deny these allegations, and therefore deny and put the plaintiff to his proof.**

17. On June 1, 2006, during the marketing presentation, Childs appeared and handed Davidian his personal business card, identifying him as "Vice President" and "Branch Manager." Childs falsely represented to Davidian that Davidian could call him for personal attention to any problem with The Bank, and that he would resolve it.

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<sup>1</sup> The document is identified as "Catalog#40473 (Wisconsin Market) ©JPMorgan Chase Bank, N.A. Member FDIC Effective Date 02/13/2006"

**Answer: As to the allegations contained in paragraph 17, defendants admit that Childs gave Davidian a business card identifying Childs as “Vice President” and “Branch Manager”. As to the remainder of the allegations contained in paragraph 17, deny.**

18. Federal law requires “all financial institutions to obtain, verify, and record information that identifies each person or business that opens an account,” according to Page1 of The Contract. See Attachment A2.

**Answer: As to the allegations contained in paragraph 18, defendants admit that attachment A2 speaks for itself, and object to any of the allegation calling for a conclusion of law. As to the remainder of the allegations contained paragraph 18, deny and put plaintiff to his proof.**

19. Diamond took Davidian’s Wisconsin Driver’s license and recorded information from the card, which includes Davidian’s date of birth as February 1944.

**Answer: As to the allegations contained in paragraph 19, defendants lack sufficient knowledge to either admit or deny these allegations, and therefore deny and put the plaintiff to his proof.**

20. Defendants induced Davidian to obtain The Bank’s services through the lengthy and misleading marketing presentation, the fraudulent representations and misleading and false marketing material produced by The Bank and the fraudulent representation and marketing presentation by Diamond and Childs.

**Answer: As to the allegations contained in paragraph 20, deny.**

21. On June 1, 2006, induced by the misleading and false representation in marketing materials and assertions of The Bank, and fraudulently informed by The Bank and its agents that The Bank would be bound by the terms of The Contract and that The Contract represented the complete guide to the rules and regulations and duties of The Bank and Davidian, Davidian deposited between \$1,500 and \$6,500 in a new account at Chase Bank ending in 1251.

**Answer: As to the allegation contained in paragraph 21, defendants lack sufficient knowledge to either admit or deny these allegations, and therefore deny and put the plaintiff to his proof.**

22. Davidian at all times fully satisfied all his obligations under The Contract.

**Answer: As to the allegations contained in paragraph 22, deny.**

23. On July 11, 2006, Chase Bank, without permission, authority or Plaintiff's knowledge and in violation of The Contract, assessed a fee of \$150 for "insufficient funds" and withdrew said amount from funds on deposit in Davidian's Chase Bank account ending in 1251.

**Answer: As to the allegations contained in paragraph 23, admit that in July of 2006 Chase Bank assessed a fee of \$150 for insufficient funds and withdrew said amount from funds on deposit in Davidian's Chase Bank account ending in 1251. As to the remainder of the paragraph, deny.**

24. Page 12 of The Contract (C. MISCELLANEOUS FEES For Consumer and Business Accounts) lists "Insufficient Funds Fee" as "\$30/item or withdrawal request." See Attachment A3.

**Answer: As to the allegations contained in paragraph 24, deny and affirmatively state that the material relied upon by the plaintiff in his complaint speaks for itself.**

25. Page 15 of The Contract (Insufficient Funds) specifies when and why a fee can be assessed for "Insufficient Funds." See Attachment A4.

**Answer: As to the allegations contained in paragraph 25, deny and affirmatively assert that the material relied upon the plaintiff in his complaint speaks for itself.**

26. On July 12, Davidian went to the JPMorgan Chase branch at 210 West Capitol Drive, Milwaukee, Wisconsin 42112 to demand the money be returned.

**Answer: As to the allegations contained in paragraph 26, defendants lack sufficient knowledge to either admit or deny these allegations, and therefore deny and put the plaintiff to his proof.**

27. Davidian understood this act to be a violation of The Contract, which states when, why and how The Bank is authorized to charge Davidian a fee.

**Answer: As to the allegations contained in paragraph 27, defendants lack sufficient knowledge to either admit or deny these allegations, and therefore deny and put the plaintiff to his proof.**

28. The agent at the Capitol Drive branch refused to refund the money despite the provisions of The Contract.

**Answer: As to the allegations contained in paragraph 28, defendants lack sufficient knowledge to either admit or deny these allegations, and therefore deny and put the plaintiff to his proof.**

29. Davidian then telephoned Diamond at the number he provided on his business card in case Davidian needed help with any problem. Davidian demanded an explanation and asked for a justification of the fee when there were funds sufficient to cover all items presented. Davidian demanded a return of the converted funds.

**Answer: As to the allegations contained in paragraph 29, defendants lack sufficient knowledge to either admit or deny these allegations, and therefore deny and put the plaintiff to his proof.**

30. Diamond did not reverse the charge.

**Answer: As to the allegations in paragraph 30, deny and state that the \$150 fee for insufficient funds was reversed and credited to Davidian's account with the Bank. As to the specifics surrounding the timing of the reversal of this charge, defendants deny and put the plaintiff to his proof.**

31. Diamond stated he asked Childs to reverse the charge, and Childs told him the fee was consistent with The Contract.

**Answer: As to the allegations contained in paragraph 31, defendants lack sufficient knowledge to either admit or deny these allegations, and therefore deny and put the plaintiff to his proof.**

32. Instead of refunding the fee, Diamond fraudulently represented that the fee was correctly assessed, and solicited Davidian to obtain additional products from The Bank to protect Davidian from future overdraft charges.

**Answer: As to the allegations contained in paragraph 32, deny.**

33. Davidian sent a fax to memorialize the conversation. See Attachment B.

**Answer: As to paragraph 33, defendants lack sufficient information to either admit or deny this paragraph and, therefore, put the plaintiff to his proof.**

34. Diamond stated that Childs refused to refund the money and that Childs said The Contract allowed The Bank to assess the fee for "Insufficient Funds."

**Answer: As to the allegations contained in paragraph 34, defendants deny and put the plaintiff to his proof.**

35. Defendant Childs fraudulently represented that The Bank was abiding by the rules governing "Insufficient Funds" fees set forth in The Contract.

**Answer: As to the allegations contained in paragraph 35, deny.**

36. On July 18, Davidian went again to The Bank and demanded that Childs provide evidence that there was an overdraft. Childs stated that he did not have to show Davidian which specific item presented for payment caused an overdraft and fraudulently represented that fee was permitted under The Contract. Following this fraudulent representation, Childs solicited Davidian to obtain the overdraft protection service.

**Answer: As to the allegations contained in paragraph 36, defendants lack sufficient knowledge to either admit or deny these allegations, and therefore deny and put the plaintiff to his proof.**

37. On July 18, 2006, The Bank and Childs fraudulently represented that there was an overdraft and used the fraud to retain Davidian's funds and to deprive Davidian of the use of his property. The Bank and Childs then used the fraudulent representation that the fee was correctly assessed to market additional financial services to Davidian, such as "overdraft protection."

**Answer: As to the allegations in paragraph 37, deny.**

38. For two weeks, Childs fraudulently represented that the removal of \$150 from Davidian's account was not an error and refused Davidian's demands that the funds be returned. Defendant Childs and other agents of Chase Bank fraudulently represented that The Bank had made no error and fraudulently represented that The Contract permitted Chase Bank to continue to assess the fees and take possession of Davidian's money unless Davidian obtained additional "overdraft protection."

**Answer: As to the allegations in paragraph 38, deny and put the plaintiff to his proof.**

39. Child's fraudulently represented that The Bank only refunds money when The Bank makes an error, but fraudulently denied The Bank made an error as a pretext to continue the conversion of Davidian's funds and to induce Davidian to stop demanding that The Bank abide by The Contract.

**Answer: As to the allegations in paragraph 39 deny and put the plaintiff to his proof.**

40. Childs and other agents of Chase Bank solicited Davidian to purchase other of Chase Bank's products including "over-draft protection" in order to prevent any additional assessments of this kind, knowing that the overdraft was fraudulently taken in breach of The Contract.

**Answer: As to the allegations in paragraph 40, deny.**

41. Davidian wrote to bank regulators and the Better Business Bureau. Childs told Davidian he was free to take his business elsewhere but would not return the fee.



**Answer: As to the allegations in paragraph 41, defendants lack sufficient knowledge to either admit or deny these allegations, and therefore deny and put the plaintiff to his proof.**

42. Davidian made a final visit to The Bank on July 21 and demanded that Childs return the fee. Childs told Davidian he did not have to refund the fees, that this was how The Bank does business and informed Davidian of Davidian's right to take what remained of his funds to another bank. Davidian told Childs on July 21 that he would file a lawsuit if the funds were not returned.

**Answer: As to the allegations in paragraph 42, admit that Davidian entered the bank branch on or about July 21 and threatened a lawsuit. As to the remainder of the paragraph, deny and put the plaintiff to his proof.**

43. On July 24, 2006 Davidian concluded that The Bank never intended to operate according to The Contract and that the conversion of funds was an intentional, fraudulent marketing device. Davidian then filed this lawsuit to force a refund.

**Answer: As to the allegations contained in paragraph 43, admit that Davidian subsequently filed a lawsuit in this matter. As to the remainder of the paragraph, defendants lack sufficient knowledge to either admit or deny these allegations, and therefore deny and put the plaintiff to his proof.**

44. The Contract was a fraudulent representation used as a marketing prop in the blue and white folder while The Bank charged fees that were not listed. Nowhere in The Contract is there an agreement that The Bank can take \$150 "Insufficient Funds" fee when money is on deposit to cover all outstanding items.

**Answer: As to the allegations contained in paragraph 44, defendants admit that the attached document speaks for itself. As to the remainder of the allegations contained in paragraph 44, deny and put the plaintiff to his proof.**

45. It was not until after the lawsuit was filed that The Bank replaced the \$150. By the time the \$150 was replaced, Davidian had out-of-pocket expenses for court filing fees and service of process.

**Answer: As to the allegations contained in paragraph 45, admit that the Bank refunded \$150.00 to Mr. Davidian's account. As to the remainder of paragraph 45, defendants lack sufficient knowledge to either admit or deny these allegations, and therefore deny and put the plaintiff to his proof.**

46. The Bank fraudulently represented that the replacement of the fee was a "courtesy" gesture that Davidian was not entitled to.

**Answer: As to the allegations contained in paragraph 46, deny.**

47. The replacement of the fee as a "courtesy" is proof that Childs fraudulently represented The Bank only returns funds when there is a Bank error. If not, the claim that the return was a "courtesy" was a fraudulent representation.

**Answer: As to the allegations contained in paragraph 47, deny.**

48. The day after the claim was filed in Milwaukee County Circuit Court, Chase Bank reversed "as a courtesy" the \$150 "insufficient funds" after having had full use of the funds for two weeks and depriving Plaintiff of the use of Plaintiff's own money.

**Answer: As to the allegations contained in paragraph 48, admit that the Bank has refunded the \$150.00 to Davidian's account. As to the remainder of the paragraph, deny.**

49. Less than one week after Davidian first demanded that The Bank return the converted funds, Chase Bank resumed its pattern of converting funds in breach of The Contract.

**Answer: As to the allegations contained in paragraph 49, deny.**

50. On July 17, 2006, without permission, authority or Plaintiff's knowledge, The Bank assessed a \$9.95 "Monthly Service Fee" for "Financial Management Software" and removed said fee from Davidian's funds on deposit in violation of The Contract. At the time of assessing and removing the fee from the funds on deposit, Defendants knew or should have known Davidian was not subject to the fee.

**Answer: As to the allegations contained in paragraph 50, admit that the Bank charged certain fees to Davidian's account. Further, admit that this assessment has since been reversed and credited to Davidian's account. As to the remainder of the paragraph, deny.**

51. On August 15, 2006, The Bank, without permission, authority or Plaintiff's knowledge assessed a \$9.95 "Monthly Service Fee" for "Financial Management Software" and removed said fee from Davidian's funds on deposit in violation of The Contract. At the time of assessing and removing the fee from the funds on deposit, Defendant's knew or should have known Davidian was not subject to the fee.

**Answer: As to the allegations contained in paragraph 51, admit that the Bank charged certain fees to Davidian's account. Further, admit that this assessment has since been reversed and credited to Davidian's account. As to the remainder of the paragraph, deny.**

52. On September 15, 2006 The Bank, without permission, authority or Plaintiff's knowledge assessed a \$9.95 "Monthly Service Fee" for "Financial Management

Software” and removed said fee from Davidian’s funds on deposition in violation of The Contract. At the time of assessing and removing the fee from the funds on deposit, Defendants knew or should have known Davidian was not subject to the fee.

**Answer: As to the allegations contained in paragraph 52, admit that the Bank charged certain fees to Davidian’s account. Further, admit that this assessment has since been reversed and credited to Davidian’s account. As to the remainder of the paragraph, deny.**

53. On October 16, 2006 The Bank, without permission, authority or Plaintiff’s knowledge assessed a \$9.95 “Monthly Service Fee” for “Financial Management Software” and removed said fee from Davidian’s funds on deposition in violation of The Contract. At the time of assessing and removing the fee from the funds on deposit, Defendants knew or should have known Davidian was not subject to the fee.

**Answer: As to the allegations contained in paragraph 53, admit that the Bank charged certain fees to Davidian’s account. Further, admit that this assessment has since been reversed and credited to Davidian’s account. As to the remainder of the paragraph, deny.**

54. Following the October 16 removal of funds from Plaintiff’s account, Plaintiff traveled to Defendant JPMorgan Chase’s branch at North Water Street and East Wisconsin Avenue and demanded that Childs and Personal Banker Jessica Rogan Strini (Strini) explain why money was taken without Plaintiff’s permission or knowledge in breach of The Contract.

**Answer: As to the allegations contained in paragraph 54, defendants lack sufficient knowledge to either admit or deny these allegations, and therefore deny and put the plaintiff to his proof.**

55. Childs acknowledged that Davidian did not owe the fees. Childs went to a computer in the customer service area of The Bank and fraudulently represented that he then and there refunded the fees, pretending to enter information into the computer and intending through the false representation to make Davidian forbear further action in seeking a refund of the funds.

**Answer: As to the allegations contained in paragraph 55, admit that certain charges were reversed and credited to Davidian’s account with the Bank. As to the remainder of the paragraph, deny and put the plaintiff to his proof.**

56. Davidian monitored the balance in his account on the Internet, and after about two weeks elapsed it was evident to Davidian that The Bank and Childs fraudulently represented that he had returned the converted funds and used the fraudulent representation to retain possession of the funds.

**Answer: As to the allegations contained in paragraph 56, defendants lack sufficient knowledge to either admit or deny these allegations, and therefore deny and put the plaintiff to his proof.**

57. Davidian contacted The Bank's lawyer and alerted him that further conversion had occurred since the filing of the lawsuit, but counsel stated The Bank did not authorize him to handle any issues not included in the pending complaint.

**Answer: As to the allegations contained in paragraph 57, deny.**

58. On Nov. 9, 2006 Davidian delivered to The Court PLAINTIFF'S MOTION FOR PERMISSION TO FILE AMENDED AND SUPPLEMENTAL COMPLAINT and PLAINTIFF'S FIRST AMENDED AND SUPPLEMENTAL COMPLAINT, incorporating the four fraudulent fees converted between July 17 and October 16.

**Answer: As to the allegations contained in paragraph 58, defendants lack sufficient knowledge to either admit or deny these allegations, and therefore deny and put the plaintiff to his proof.**

59. On Nov. 10, 2006 The Bank reversed the charges.

**Answer: As to the allegations contained in paragraph 59, admit.**

60. On Nov. 26, The Bank, without permission, authority or Plaintiff's knowledge assessed a \$9.95 "Monthly Service Fee" for "Financial Management Software" and removed said fee from Davidian's funds on deposit in violation of The Contract. At the time of assessing and removing the fee from the funds on deposit, Defendants knew or should have known Davidian was not subject to the fee.

**Answer: As to the allegations contained in paragraph 60, admit that the Bank charged certain fees to Davidian's account. Further, admit that this assessment has since been reversed and credited to Davidian's account. As to the remainder of the paragraph, deny.**

61. Despite Child's fraudulent representation that he was refunding the fees to Davidian's account, Chase Bank retained possession of Davidian's money. As a result, Plaintiff was deprived of the use of the money he had entrusted to Chase Bank. Child's fraudulently represented to Davidian that The Bank's policy is to return unauthorized fees only if the depositor discovers The Bank's action within two months. Child's asserted that a depositor who does not discover the error until more than two months after the action must forfeit the fees because "The Bank thinks that is fair." The policy falsely articulated by Child's deviates from The Contract used by defendants to market their products to potential Wisconsin customers, including the elderly.

**Answer: As to the allegations contained in paragraph 61, deny.**

62. This retention of converted funds shows that although Defendant JPMorgan Chase's CODE OF CONDUCT (The Code) "sets forth certain minimum expectations that JPMorgan Chase has for" . . . "employees and directors of JPMorgan Chase & Co. and its direct and indirect subsidiaries," Defendants use this CODE OF CONDUCT and statements on corporate governance as a fraudulent and misleading advertising scheme to misrepresent The Bank's governance. See Attachment C.

**Answer: As to the allegations contained in paragraph 62, deny and assert that the documents the plaintiff relies upon in this complaint speak for themselves.**

63. Defendant Harrison says of Chase governance: "[Defendant James] Jamie Dimon and I are proud of the 200-year tradition of integrity on which this firm is built . . . ."

**Answer: As to the allegations contained in paragraph 63, deny and assert that the documents the plaintiff relies upon in this complaint speaks for themselves.**

64. The Code applies to all employees "of JPMorgan & Co., and its direct and indirect subsidiaries."

**Answer: As to the allegations contained in paragraph 64, deny and assert that the documents the plaintiff relies upon in this complaint speak for themselves.**

65. In Section 5 (OTHER BUSINESS CONDUCT) on Page 8, the Code falsely represents the standard to which employee conduct is held. Section 5 states: "We are all expected to conduct the firm's business in accordance with the highest ethical standards, respecting the firm's customers, suppliers, and other business counterparties, dealing responsibly with the firm's assets, and complying with applicable legal and regulatory requirements."

**Answer: As to the allegations contained in paragraph 65, deny and assert that the documents plaintiff relies upon in his complaint speak for themselves.**

66. Section 5.1 of The Code continues: "You are expected to protect the firm's assets as well as the assets of others that come into your custody. The firm's assets include . . . customer relationships and intellectual property such as information about products, services, customers, systems and people."

**Answer: As to the allegations contained in paragraph 66, deny and assert that the documents plaintiff relies upon in his complaint speak for themselves.**

67. These provisions of the Code are false misrepresentations of the way Chase Bank does business, and they are intended to induce the public, including elderly Wisconsin residents, that the company will enforce violations of The Code.

**Answer: As to the allegations contained in paragraph 67, deny.**

68. On August 1, 2006, during discussions regarding a settlement in this case, The Bank, through its attorney agreed to pay \$1,750 to settle the original "insufficient funds" fee, but refused to give Childs additional training that would allow him to fulfill the standards set forth in The Code.

**Answer: As to the allegations contained in paragraph 68, admit that during discussions in this case, the Bank agreed to pay \$1,750 to settle the claims asserted in plaintiff's Original Complaint. As to the remaining allegations, deny.**

69. During most of the period of conversion of Davidian's funds, Davidian's wife was unemployed; they had no health insurance, medical insurance or prescription insurance. Davidian was concerned about retaliation by The Bank that might cause defendants to further convert funds in violation of The Contract. Davidian suffered emotional damage including intense anger and frustration, feelings of inadequacy for being a journalist without the legal skills or ability to defend his family against fraudulent bankers.

**Answer: As to the allegations contained in paragraph 69, defendants lack sufficient knowledge to either admit or deny these allegations, and therefore deny and put the plaintiff to his proof.**

70. In The Bank's November 21, 2006 RESPONSES TO REQUEST FOR ADMISSIONS, JPMorgan Chase Bank, N.A. First Vice President Brian Thurman admits there was sufficient money on deposit in Davidian's account to cover each and every item presented for payment. See Attachment D.

**Answer: As to the allegations contained in paragraph 70, documents speak for themselves. As to remainder of allegations, deny.**

71. Thurman also admits that The Bank took an insufficient funds fee of \$150.

**Answer: As to the allegations contained in paragraph 71, admit.**

72. The following day, Defendant Childs retaliated. Childs announced by certified letter dated November 22, that The Bank was closing Davidian's accounts and that Davidian's "ATM card will be blocked." Further, the letter dates that Defendants will return any checks received as of November 22, 2006 and marked "Account Closed." Although Davidian had not violated The Contract and had funds on deposit, Defendants ordered Plaintiff to not write checks on the accounts, not access the funds through an ATM and to destroy ATM cards.

**Answer: As to the allegations contained in paragraph 72, admit that pursuant to its rights and applicable account Rules and Regulations and Terms and Conditions, the Bank notified the defendant by a certified letter dated November 22, 2006 that it**

would be closing his account. Further state that this certified letter speaks for itself. As to the remainder of the paragraph, deny.

73. On November 24, Defendants' security office in Chicago ordered Plaintiff by telephone to not enter The Bank because Defendant Childs was afraid when Plaintiff asked for return of converted funds. This final action amounts to a final and complete total conversion of all of Davidian's funds by Defendants in furtherance of their ongoing and organized "way of doing business."

**Answer: As to the allegations contained in paragraph 73, admit that the security office of the Bank directed plaintiff to not enter the Bank due to Mr. Childs' fear for his personal safety as well as that of other employees and bank customers. As to the remainder of the paragraph, deny.**

74. This is The Bank's "way of doing business" and it was anticipated by Harrison and Dimon in a document sent in April 2004 to stockholders of JPMorgan Chase and Bank One as they proposed merger of the companies. See Attachment F.

On Page 23 of the letter, Defendants Harrison and Dimon write:

"The success of the merger will depend, in part, on our ability to realize the anticipated cost savings from combining the business of JPMorgan Chase and Bank One. Our managements have estimated that approximately \$2.2 billion of annual pre-tax cost savings, to be phased in between 2004 and 2007, would be realized from the merger. However, to realize the anticipated benefits from the merger, we must successfully combine the businesses of JPMorgan Chase and Bank One in a manner that permits those cost savings to be realized. If we are not able to successfully achieve these objectives, the anticipated benefits of the merger may not be realized fully or at all or make take longer to realize than expected. Such a failure could result in dilution to JPMorgan Chase's earnings per share.

In addition, JPMorgan Chase and Bank One have operating and, until the completion of the merger, will continue to operate, independently. If it is possible that the integration process could result in the loss of key employees, the disruption of each company's ongoing businesses or inconsistencies in standards, controls, procedures and policies, any of which could adversely affect our ability to maintain relationships with clients and employees or our ability to achieve the anticipated benefits of the merger or could reduce our earnings."

**Answer: As to the allegations contained in paragraph 74, defendants admit that the attached document speaks for itself. Otherwise, defendants lack sufficient knowledge to either admit or deny these allegations, and therefore deny and put the plaintiff to his proof.**

71. Davidian used automatic debit payments for phone service, Web hosting, life insurance and other services that were linked to the accounts. Davidian worries that services will be cut off if The Bank closes his account and the automatic payments are rejected.

**Answer: As to the allegations contained in paragraph 75, improperly denoted as paragraph 71, defendants lack sufficient knowledge to either admit or deny these allegations, and therefore deny and put the plaintiff to his proof.**

72. The elderly are more likely to suffer the losses specified in Wis. Stats. 100.264(b).

**Answer: As to the allegations contained in paragraph 76, improperly denoted as paragraph 72, defendants lack sufficient knowledge to either admit or deny these allegations, and therefore deny and put the plaintiff to his proof.**

**CLAIM ONE**  
**CONVERSION**

73. Plaintiff incorporates by reference as though set forth in full here paragraphs 1 through 72 preceding.

**Answer: As to the allegations contained in paragraph 77, improperly denoted as paragraph 73, defendant incorporates by reference as though more fully stated herein paragraphs 1 through 76 of its Answer.**

74. By assessing an "Insufficient Funds" fee and withdrawing said fee from Davidian's account on July 11, 2006 as alleged herein, Defendants JPMorgan Chase Bank, N.A. and Childs and each of them intentionally controlled and took property belonging to Davidian without Davidian's consent and without cause, justification or authority.

**Answer: As to the allegations contained in paragraph 78, improperly denoted as paragraph 74, deny.**

75. Defendants' conduct as alleged herein resulted in serious interference with rights of Davidian to possess his property.

**Answer: As to the allegations contained in paragraph 79, improperly denoted as paragraph 75, deny.**

**CLAIM TWO**  
**CONVERSION**

76. Plaintiff incorporates by reference as though set forth in full here paragraphs 1 through 75 preceding.



**Answer: As to the allegations contained in paragraph 80, improperly denoted as paragraph 76, defendant incorporates by reference as though more fully stated herein paragraphs 1 through 80 of its Answer.**

77. By assessing the fees and withdrawing said fees from Davidian's accounts on July 17, 2006, as alleged herein, Defendants, JPMorgan Chase Bank, N.A. and Childs and each of them intentionally controlled and took property belonging to Davidian without Davidian's consent and without cause, justification or authority.

**Answer: As to the allegations contained in paragraph 81, improperly denoted as paragraph 77, deny.**

78. Defendants' conduct as alleged herein resulted in serious interference with rights of Davidian to possess his property.

**Answer: As to the allegations contained in paragraph 82, improperly denoted as paragraph 78, deny.**

79. By assessing an "Insufficient Funds" fee on July 11, 2006, withdrawing said fee from Davidian's accounts while sufficient funds were on deposit and by refusing to return the fees, The Defendants JPMorgan Chase Bank N.A. and Childs and each of them did intentionally and with malice Breach The Contract as set forth in Defendant JPMorgan Chase's Account Rules and Regulations for the Wisconsin Market and Defendant JPMorgan Chase's Consumer Account Bill Payment & Transfer Services Agreement (Legal Agreement).

**Answer: As to the allegations contained in paragraph 83, improperly denoted as paragraph 79, deny.**

### CLAIM THREE

#### BREACH OF CONTRACT

80. Plaintiff repeats and re-alleges as though more fully set forth herein paragraphs 1 through 76 preceding.

**Answer: As to the allegations in paragraph 84, improperly denoted as paragraph 80, defendant incorporates by reference as though more fully stated herein paragraphs 1 through 84 of its Answer.**

81. That Defendant JPMorgan Chase Bank N.A. on July 17, 2006, by assessing a \$9.95 "Monthly Service Fee" for "Financial Management Software," breached the terms of The Contract and converted funds not subject to fee guidelines.

**Answer: As to the allegations contained in paragraph 85, improperly denoted as paragraph 81, deny.**

**CLAIM FOUR**  
**BREACH OF CONTRACT**

82. Plaintiff repeats and re-alleges as though more fully set forth herein paragraphs 1 through 81 preceding.

**Answer: As to the allegations contained in paragraph 86, improperly denoted as paragraph 82, defendant incorporates by reference as though more fully stated herein paragraphs 1 through 85 of its Answer.**

83. That Defendant JPMorgan Chase Bank N.A. on August 15, 2006, by assessing a \$9.95 "Monthly Service Fee" for "Financial Management Software," breached the terms of The Contract and converted funds not subject to fee guidelines.

**Answer: As to the allegations contained in paragraph 87, improperly denoted as paragraph 83, deny.**

**CLAIM FIVE**  
**BREACH OF CONTRACT**

84. Plaintiff repeats and re-alleges as though more fully set forth herein paragraphs 1 through 83 preceding.

**Answer: As to the allegations contained in paragraph 88, improperly denoted as paragraph 84, defendant incorporates by reference as though more fully stated herein paragraphs 1 through 87 of its Answer.**

85. That Defendant JPMorgan Chase Bank N.A. on September 15, 2006, by assessing a \$9.95 "Monthly Service Fee" for "Financial Management Software," breached the terms of The Contract and converted funds not subject to fee guidelines.

**Answer: As to the allegations contained in paragraph 89, improperly denoted as paragraph 85, deny.**

**CLAIM SIX**  
**BREACH OF CONTRACT**

86. Plaintiff repeats and re-alleges as though more fully set forth herein paragraphs 1 through 85 preceding.

**Answer: As to the allegations contained in paragraph 90, improperly denoted as paragraph 86, plaintiff incorporates by reference as though more fully stated herein paragraphs 1 through 89 of its Answer.**

87. That Defendant JPMorgan Chase Bank N.A. on October 16, 2006, by assessing a \$9.95 "Monthly Service Fee" for "Financial Management Software," breached the terms of The Contract and converted funds not subject to fee guidelines.

**Answer: As to the allegations contained in paragraph 91, improperly denoted as paragraph 87, deny.**

**CLAIM SEVEN**  
**BREACH OF CONTRACT**

88. Plaintiff repeats and re-alleges as though more fully set forth herein paragraphs 1 through 78 preceding.

**Answer: As to the allegations contained in paragraph 92, improperly denoted as paragraph 88, plaintiff incorporates by reference as though more fully stated herein paragraphs 1 through 91 of its Answer.**

89. That Defendant JPMorgan Chase Bank N.A. on November 16, 2006, by assessing a \$9.95 "Monthly Service Fee" for "Financial Management Software," breached the terms of The Contract and converted funds not subject to fee guidelines.

**Answer: As to the allegations contained in paragraph 93, improperly denoted as paragraph 91, deny.**

**CLAIM EIGHT**  
**FRAUDULENT REPRESENTATION IN VIOLATION OF § 100.18 Wis. Stat.**

90. Plaintiff repeats and re-alleges as though more fully set forth herein paragraphs 1 through 89 preceding.

**Answer: As to the allegations contained in paragraph 94, improperly denoted as paragraph 90, defendant incorporates by reference paragraphs 1 through 93 of its Answer.**

91. That Defendants JPMorgan Chase and Childs and each of them on June 1, 2006 fraudulently represented that the "Account Rules and Regulations" ("The Contract") were the rules The Bank adhered to.

**Answer: As to the allegations contained in paragraph 95, improperly denoted as paragraph 91, deny.**

92. This fraudulent inducement was made to induce Davidian, an elderly Wisconsin resident, to obtain products and services from The Bank.

**Answer: As to the allegations contained in paragraph 96, improperly denoted as paragraph 92, deny.**

#### CLAIM NINE

#### **FRAUDULENT REPRESENTATION IN VIOLATION OF § 100.18 Wis. Stat.**

93. Plaintiff repeats and re-alleges as though more fully set forth herein paragraphs 1 through 92 preceding.

**Answer: As to the allegations contained in paragraph 97, improperly denoted as paragraph 93, defendant incorporates by reference paragraphs 1 through 96 of its Answer.**

#### CLAIM TEN

#### **STRICT RESPONSIBILITY AND INTENTIONAL MISREPRESENTATION**

94. That Defendants JPMorgan Chase, Harrison and Dimon caused damage to Davidian by intentionally misrepresenting the role of The Code in Corporate governance prior to Thurman's admissions dated November 21, 2006, and had strict responsibility for correcting the problems herein alleged.

**Answer: As to the allegations contained in paragraph 98, improperly denoted as paragraph 94, defendant incorporates by reference, paragraphs 1 through 97 of its Answer and denies the allegations set forth in this paragraph.**

#### **AFFIRMATIVE DEFENSES**

NOW COME the defendants, J.P. Morgan Chase Bank, N.A., Jeff Childs, William B. Harrison, Jr. and James Dimon, by their attorneys, and as and for their affirmative defenses to the Complaint, allege and show to the Court, as follows:

1. Plaintiff's Complaint fails to state a claim upon which relief can be granted, and therefore, must be dismissed.

2. Plaintiff has failed to mitigate his alleged damages.
3. The \$150.00 insufficient fund fee charged to the plaintiff's account was refunded to the plaintiff's account on July 24, 2006 rendering this action moot.
4. The plaintiff returned the \$150.00 refund to defendant's original counsel and said return of funds constitutes a waiver of the plaintiff's claim.
5. All assessments for financial management software have been refunded to the plaintiff's account rendering this action moot.
6. Defendants were operating within their contractual rights when they closed plaintiff's account and notified him of this fact by certified letter on November 22, 2006.
7. Plaintiff has failed to execute proper service against defendants Childs, Harrison and Dimon and, therefore, these parties are not properly before the jurisdiction of this Court.
8. Defendants Dimon and Harrison are not citizens of the State of Wisconsin and do not have substantial contacts with the State of Wisconsin, and therefore, this court does not have personal jurisdiction over these individuals.
9. At all times material to the Complaint, defendants Childs, Harrison and Dimon were acting in their capacity as employees of defendant JPMorgan Chase Bank, N.A. ("JPMorgan") and, therefore, are not subject to personal liability for the actions alleged in the plaintiff's Complaint.
10. The Court should dismiss this action as to all defendants due to improper service of process.

11. Pursuant to the Terms and Conditions governing Mr. Davidian's account, Mr. Davidian is prohibited from pursuing his claims by way of a jury trial.

**COUNTERCLAIM**

NOW COME the defendants, J.P. Morgan Chase Bank, N.A., Jeff Childs, William B. Harrison, Jr. and James Dimon, by their attorneys, and as and for their counterclaim, allege and show to the court as follows:

1. JPMorgan Chase Bank, N.A., successor by merger to Bank One, N.A., is a national association by merger to Bank One, N.A., is a national association, duly organized and existing under the laws of the United States and has its principal place of business in Columbus, Ohio.
2. Geoff Davidian (hereinafter "Davidian"), is an individual residing at 4101 N. Propsect Ave., Milwaukee, WI 53211.
3. At all times material, Davidian had a joint demand deposit account with JPMorgan, together with Christine Grant who, upon information and belief, is Davidian's wife. Further, Davidian's relationship with JPMorgan is that of a debtor-creditor relationship.
4. The applicable Rules and Regulations and Terms and Conditions applicable to Davidian's joint account with JPMorgan provided that JPMorgan may restrict the use of funds on deposit in Davidian's account if the account is involved in any legal proceeding or if JPMorgan reasonably deems such action necessary to avoid a loss, and allows for the collection of all expenses incurred by JPMorgan as a result of any legal proceeding

affecting Davidian's joint account, including, but not limited to, court costs and attorney fees.

5. Davidian has maintained this action against JPMorgan for the charging of insufficient fund fee and the assessment of a \$9.95 monthly service for financial management software after said fees were refunded to Davidian and has refused to resolve such action causing JPMorgan to incur court costs and attorney fees affecting Davidian's account. Davidian has further continued to pursue vexatious and costly litigation in this matter with the sole intent of harassing JPMorgan and its employees.

**WHEREFORE**, defendant demands judgment as follows:

- (1) Dismissing the complaint on its merits;
- (2) For defendant's costs and disbursements of defending the action;
- (3) On the counterclaim, for the attorney fees and legal expenses incurred by JPMorgan, to the extent provided for in the account agreement and relevant law;
- (4) For taxable costs and disbursement of the counterclaim;
- (5) For such other or further relief as the court deems just and proper.

Dated this 18<sup>th</sup> day of December, 2006.

Kevin M. Long  
State Bar No. 1018128  
Natalie R. Remington  
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