

DISTRICT COURT, COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202 303-606-2300	DATE FILED: September 9, 2021 5:58 PM FILING ID: CF98AB41D71CF CASE NUMBER: 2021CV32726
Plaintiff: GARY SCHWARTZ  v.  Defendant: JPMORGAN CHASE BANK N.A.	<hr/> <p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p> <hr/> Case Number: 21CV30264   Division: 203
<hr/> Attorney for Defendant: Naomi Beer, #29144 Sarah M. Mathews, #54961 GREENBERG TRAUIG, LLP 1144 Fifteenth St., Ste. 3300 Denver, CO 80202 Telephone: 303-572-6500 Facsimile: (303) 572-6540 beern@gtlaw.com mathewss@gtlaw.com	
<b>NOTICE OF FILING OF REMOVAL</b>	

To: The Clerk of the District Court, Denver County, Colorado

PLEASE TAKE NOTICE that Defendant JPMorgan Chase Bank, N.A. (“Chase”), without submitting itself to the jurisdiction of this Court, by and through its counsel of record, has filed a Notice of Removal in the office of the clerk of the United States District Court for the District of Colorado. A copy of the Notice of Removal is attached hereto as Exhibit 1.

By virtue of law, the aforesaid case is now removed and all further proceedings in the District Court, Denver County, Colorado are stayed.

Respectfully submitted this 9<sup>th</sup> day of September, 2021.

GREENBERG TRAUIG, LLP

*s/ Naomi Beer*  
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 Naomi Beer, #29144  
 Sarah M. Mathews, #54961  
 Counsel for Defendant

**CERTIFICATE OF SERVICE**

I, hereby certify that on September 9, 2021, the foregoing **NOTICE OF FILING OF REMOVAL** was electronically filed and served via Colorado Courts E-Filing to all counsel of record as follows:

John A. Chanin, Reg. No. 20749  
Katherine A. Roush, Reg. No. 39267  
Jason M. Spitalnick, Reg. No 51037  
Foster Graham Milstein & Calisher LLP  
360 S. Garfield Street, 6th Floor  
Denver, Colorado 80209

*Attorneys for Plaintiff*

*s/ Sarah M. Mathews* \_\_\_\_\_  
Sarah M. Mathews

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# **EXHIBIT 1**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

GARY SCHWARTZ, Court-Appointed  
Receiver for Mark Ray, Custom Consulting &  
Product Services, LLC, MR Cattle Production  
Services, LLC, Universal Herbs, LLC, DBC  
Limited, LLC, RM Farm & Livestock, LLC,  
Sunshine Enterprises, and real  
property/equipment/inventory at 12700 East  
Lone Chimney Road, Glencoe, OK 74032,

Plaintiff,

v.

JPMORGAN CHASE BANK, N.A.,

Defendant.

Civil Action No.: \_\_\_\_\_

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**NOTICE OF REMOVAL BY JPMORGAN CHASE BANK, N.A.**

Pursuant to 28 U.S.C. §§ 1332, 1441, 1446 and L.Civ.R. 81.1, Defendant JPMorgan Chase Bank, N.A. (“Chase”) respectfully gives notice of the removal to the United States District Court for the District of Colorado, the state court action captioned *Gary Schwartz v. JPMorgan Chase Bank N.A.*, Case Number 21-CV-32726, filed in the District Court of Denver County, Colorado (the “State Court Action”). In support of removal, Chase states as follows:

**BACKGROUND AND GENERAL REQUIREMENTS**

1. On August 31, 2021, Gary Schwartz (“Schwartz”), in his capacity as court-appointed receiver of an estate of Mark Ray (individually), Custom Consulting & Product Services, LLC, MR Cattle Production Services, LLC, Universal Herbs, LLC, DBC Limited, LLC, RM Farm & Livestock, LLC, Sunshine Enterprises, as well as all real property, equipment, and

inventory at 12700 East Lone Chimney Road, Glencoe, OK 74032, filed a Complaint (the “Complaint”) in the State Court Action. The Complaint was filed in the State Court Action as suppressed.

2. A true and correct copy of the suppressed Complaint is attached hereto as **Exhibit 1** and is incorporated herein by reference.<sup>1</sup> Within the meaning and intent of 28 U.S.C. § 1446, the documents contained in **Exhibits 1-10** constitute all process, pleadings and orders filed to date in the State Court Action.

3. Chase is the only Defendant in the State Court Action. (*Id.* at 1.)

4. On September 7, 2021, Chase was served with a Summons and Complaint.

5. Pursuant to 28 U.S.C. § 1446(b), Chase files this Notice of Removal within thirty days of service of the Complaint.

6. Pursuant to 28 U.S.C. §§ 1441(a) and 1446(a), venue is proper in the District Court of Colorado because the State Court Action is currently pending in the District Court of Denver County, Colorado, and this Court is therefore the “district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

7. Pursuant to 28 U.S.C. § 1446(d), Chase has contemporaneously filed with the Clerk of the District Court of Denver County, Colorado, and served on all adverse parties, a true and correct copy of this Notice of Removal.

### **GROUND FOR REMOVAL**

8. Under 28 U.S.C. § 1441, a defendant in state court may remove the case to federal court when a federal court would have had jurisdiction if the case had been filed there originally.

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<sup>1</sup> The Complaint and other suppressed documents from the State Court Action have been filed as a restricted documents pending a Motion to Restrict pursuant to L.Civ.R. 7.2.

*Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987) (cited with approval in *Topeka Housing Auth. v. Johnson*, 404 F.3d 1245, 1247 (10<sup>th</sup> Cir. 2005)). The party seeking to invoke federal diversity jurisdiction bears the burden of demonstrating that the complete diversity and amount in controversy requirements are met at the time of removal. *McPhail v. Deere & Co.*, 529 F.3d 947, 955-56 (10<sup>th</sup> Cir. 2008); *Laughlin v. Kmart Corp.*, 50 F.3d 871, 873 (10<sup>th</sup> Cir. 1995). As explained below, this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because there is complete diversity between Schwartz and Chase and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

9. Schwartz was appointed the Receiver in a Denver County District Court Case, case no. 19-CV-33770. Order Appointing Receiver, *Cheval v. Ray*, Case No. 19-CV-33770 (September 30, 2019). He is a citizen of Colorado. *Id.* at 2.

10. Chase is now, and has been at all times relevant to the claims set forth in the Complaint, a national banking association with its main office in Columbus, Ohio, the state listed in its articles of association. **Exhibit 11** (a true and correct copy of Chase's Articles of Association). Chase is, therefore, a citizen of the State of Ohio for purposes of diversity and is not a citizen of the State of Colorado for the purpose of 28 U.S.C. § 1332(c)(1) or 28 U.S.C. § 1441(b) at any time relevant to the claims set forth in the Complaint. *Wachovia Bank v. Schmidt*, 546 U.S. 303, 318 (2006).

11. Accordingly, there exists complete diversity of citizenship between the parties under 28 U.S.C. § 1332(a) because Chase is not a citizen of the same state in which Schwartz is a citizen, and this case is properly removable because Chase is not a citizen of the state in which this action was brought under 28 U.S.C. § 1441(b).

12. When a complaint does not contain a controlling *ad damnum* clause, the removing defendant must allege by a “preponderance of the evidence” that “the amount in controversy may exceed \$75,000.” *McPhail*, 529 F.3d at 953. Such a showing is satisfied where the removing defendant’s Notice of Removal presents jurisdictional facts supporting the “assertion that this case may involve more than \$75,000.” *Id.* at 955; *Laughlin*, 50 F.3d at 873. The party seeking removal can meet this burden by, *inter alia*, supporting its allegations of jurisdiction with either “an estimate of the potential damages from the allegations in the complaint” or “other documentation [that] can provide the basis for determining the amount in controversy.” *McPhail*, 529 F.3d at 951-52, 955-56. “[A] plaintiff cannot avoid removal merely by declining to allege the jurisdictional amount.” *Id.* at 955.

13. This matter satisfies the jurisdictional amount in controversy requirement contained in 28 U.S.C. § 1332(a). Indeed, Schwartz’s civil cover sheet in the State Court Action certifies and confirms that Schwartz is seeking a monetary judgment for “more than \$100,000.” **Exhibit 2**, Civil Cover Sheet. Therefore, under *McPhail* and *Laughlin*, the jurisdictional amount in controversy is satisfied here, rendering this matter properly removable pursuant to 28 U.S.C. §§ 1332 and 1441(a).

14. Accordingly, because Schwartz is not a citizen of the same state as Chase, Chase is not a citizen of the state in which this action was filed, and the amount in controversy, exclusive of interest and costs, exceeds the sum of \$75,000, this action may be removed to this Court on diversity grounds pursuant to 28 U.S.C. §§ 1332 and 1441(a).

15. In accordance with 28 U.S.C. § 1446(a) and L.Civ.R. 81.1, copies of all pleadings, motions, and other papers in the State Court Action to date are attached hereto as:

- Ex. 1: Complaint and Jury Demand including Exhibits thereto;
- Ex. 2: Civil Cover Sheet;
- Ex. 3: Summons to Chase;
- Ex. 4: Motion to Suppress including Exhibit;
- Ex. 5: Delay Reduction Order;
- Ex. 6: Pre-Trial Order;
- Ex. 7: Order re: Motion to Suppress;
- Ex. 8: Notice of Related Case;
- Ex. 9: Return of Service of Complaint;
- Ex. 10: State Court Register of Actions.

16. Pursuant to L.Civ.R. 81.1, Chase certifies that no hearing has been set in the State Court Action at the time of this removal.

17. Promptly after filing this Notice of Removal with this Court, Defendant will give written notice of the removal to all adverse parties, and will file a copy of its Notice of Removal with the District Court of Denver County, State of Colorado. *See* 28 U.S.C. § 1446(d).

WHEREFORE, Defendant JPMorgan Chase Bank, N.A. removes this action from the District Court of Denver County, Colorado to the United States District Court for the District of Colorado.



Respectfully submitted this 9th day of September 2021.

GREENBERG TRAURIG, LLP

/s/ Naomi G. Beer

Naomi G. Beer

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ATTORNEYS FOR

JPMORGAN CHASE BANK, N.A.

**CERTIFICATE OF SERVICE**

I, Naomi G. Beer, an attorney, hereby certify that I caused to be served a copy of the foregoing **NOTICE OF REMOVAL** upon the counsel of record below via United States mail, first-class, postage prepaid on September 9, 2021:

John A. Chanin, Reg. No. 20749  
Katherine A. Roush, Reg. No. 39267  
Jason M. Spitalnick, Reg. No 51037  
Foster Graham Milstein & Calisher LLP  
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*Attorneys for Plaintiff*

/s/ Naomi G. Beer  
Naomi G. Beer