

CAUSE NO. 2018-08341

FREE AND SOVERIGN STATE OF	§	IN THE DISTRICT COURT OF
VERACRUZ DE IGNACIO DE LA LLAVE	§	
	§	
v.	§	
	§	HARRIS COUNTY, TEXAS
CW OPERATING COMPANY, INC.,	§	
JAVIER DUARTE DE OCHOA, JOSE A.	§	
BANDIN, MONICA BABAYAN, BBVA	§	
COMPASS BANCSHARES, INC. &	§	
WELLS FARGO BANK, N.A.	§	113 <sup>TH</sup> JUDICIAL DISTRICT

**DEFENDANT COMPASS BANK'S ORIGINAL ANSWER, PETITION  
FOR INTERPLEADER, PETITION FOR DECLARATORY JUDGMENT,  
AND REQUEST FOR DISCLOSURE**

Pursuant to the Texas Rules of Civil Procedure, Defendant Compass Bank d/b/a BBVA Compass, incorrectly named BBVA Compass Bancshares, Inc. ("**Compass Bank**") files this Original Answer, Petition for Interpleader, Petition for Declaratory Judgment, and Request for Disclosure in response to Plaintiff's Free and Sovereign State of Veracruz De Ignacio De La Llave ("**Plaintiff**") Original Petition and Application for Temporary Restraining Order, and would respectfully show unto the Court as follows:

**FACTS**

1. This is primarily a dispute between other parties. Compass Bank has funds in its possession that it would like to provide into the Registry of the Court. In Account no. xxxxxx3020, Compass Bank is holding the amount of Five Thousand Nine Hundred Seventy-Four and 46/100 Dollars (\$5,974.46), and in Account no. xxxxx2758 Compass Bank is holding the amount of Five Hundred One and 51/100 Dollars (\$501.51) (the "**Disputed Funds**"). Compass Bank is subject to multiple claims in and to the funds on deposit in the Account.

## COMPASS BANK'S ORIGINAL ANSWER

2. Compass Bank asserts a general denial pursuant to Rule 92 of the Texas Rules of Civil Procedure and requests that Plaintiff be required to prove Plaintiff's claims and causes of action by a preponderance of the evidence or such higher standard as may be applicable.

### AFFIRMATIVE DEFENSES<sup>1</sup>

3. Compass Bank denies that the conditions precedent necessary for any recovery hereunder by Plaintiff has occurred or has been satisfied.

4. For further answer, Compass Bank would show that it has not breached any agreement with Plaintiff. In fact, at all times material hereto, Compass Bank's conduct was consistent with any purported contract between Compass Bank and Plaintiff.

5. For further answer, Compass Bank would show that the damages, if any, allegedly sustained by the Plaintiff were caused, in whole or in part, by the Plaintiff's negligence, or the negligence of others for whom Compass Bank is not responsible.

6. For further answer, Compass Bank denies that Plaintiff is entitled to attorneys' fees under any applicable laws of the State of Texas.

7. For further answer, Compass Bank would show that Plaintiff has failed to mitigate Plaintiff's damages as Plaintiff is required to do by law.

8. For further answer, Compass Bank would show that Plaintiff has waived or is estopped to claim any damages in that the Plaintiff's claims are barred by the statute of frauds and/or the parol evidence rule.

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<sup>1</sup> It appears that there are no affirmative claims for relief filed against Compass Bank. Compass Bank is including affirmative defenses in an abundance of caution.

9. For further answer, Compass Bank would show that Plaintiff acted in such a way as to constitute contributory negligence, assumption of risk, estoppel, release, waiver and/or unjust enrichment.

10. For further answer, Compass Bank specifically denies that it owed any duty to Plaintiff other than duties created by the governing account agreement.

11. For further answer, Compass Bank denies that it owed any common law, statutory or contractual duty to Plaintiff for which it could possibly be liable in damages.

12. For further answer, Compass Bank specifically denies that it made any representation to the Plaintiff that could form the basis of any cause of action.

13. For further answer, Compass Bank would show that the sole proximate cause of Plaintiff's damages, if any, was the conduct of a person or entity other than Plaintiff or Compass Bank, which was the only cause of the occurrence at issue.

14. For further answer, Compass Bank would show that various provisions of the Texas Business and Commerce Code appear to bar Plaintiff's claims.

15. For further answer, Compass Bank would show that Plaintiff's claims are barred pursuant to the doctrine of laches, unclean hands and/or ratification.

16. For further and special answer herein, if such be necessary, and in the alternative, Compass Bank avers that such damages as Plaintiff may have sustained were proximately caused by the failure of Plaintiff to exercise that degree of care which would have been exercised by persons of ordinary prudence in the exercise of ordinary care under the same or similar circumstances.

17. For further answer, Compass Bank denies that any act or inaction by Compass Bank was a producing or proximate cause of damage to Plaintiff.

18. For further answer, Compass Bank would show that Plaintiff was contributorily negligent or is proportionately responsible in connection with the transactions at issue, and, to the extent of such contributory negligence or proportionate responsibility, Plaintiff is barred from recovering damages resulting from Plaintiff's own failure to exercise ordinary care. Plaintiff's conduct also estops Plaintiff from asserting Plaintiff's own claims.

19. For further answer, to the extent not already pleaded herein, Compass Bank denies that any basis exists for the imposition of additional or punitive damages. In particular, Compass Bank denies that it committed any wrongful act, either knowingly, maliciously, or intentionally or under circumstances constituting willful, wanton, or reckless disregard of Plaintiff's rights.

20. For further answer, Plaintiff may be alleging that Plaintiff is entitled to pre-judgment and post-judgment interest. Plaintiff may also be alleging that Plaintiff will suffer future injuries as a result of Defendant's actions. Pursuant to Section 304 of the Texas Finance Code, pre-judgment interest may NOT be assessed or recovered on an award of future damages. *See* TEX. FIN. CODE ANN. § 304.1045 (Vernon Supp. 2004). Pre-judgment interest accrues on the amount of the judgment during the period on the earlier of the 180th day after the date on which Third Party Defendant receives written notice of Plaintiff's claim or the date on which suit is filed and ending on the day preceding the date on which judgment is rendered. *Id.* at §304.104. Prejudgment interest is computed as simple interest and does not compound. *Id.* The post-judgment interest rate is either the prime rate as published by the Federal Reserve Bank of New York on the date of computation; five percent a year if the prime rate as published is less than five percent; or 15 percent a year if the prime rate as published is more than 15 percent. *Id.* at § 304.003.

21. For further answer, Compass Bank reserves its right to amend this answer as may be authorized by the Court, and as may be permitted by the Texas Rules of Civil Procedure.

**ORIGINAL PETITION FOR INTERPLEADER AND  
ORIGINAL PETITION FOR DECLARATORY JUDGMENT**

**PARTIES**

22. Counter-Plaintiff is Compass Bank d/b/a BBVA Compass (“**Compass Bank**”).

23. Interpleader Defendants are Sovereign State of Veracruz De Ignacio De La Llave, Javier Duarte De Ochoa, Jose A. Bandin, and Monica Babayan (collectively “**Interpleader Defendants**”), and Compass Bank will ask their respective counsel to accept service at this time.

**JURISDICTION AND VENUE**

24. Venue is proper in Texas because all or a substantial part of the events omissions giving rise to the claims alleged occurred in Harris County, Texas. Therefore, venue is proper in Texas pursuant to § 15.002 of the Texas Civil Practice and Remedies Code.

**FACTS AND CLAIMS**

25. This is primarily a dispute between other parties. Compass Bank had funds in its possession that it would like to provide into the Registry of the Court. In Account no. xxxxxx3020, Compass Bank is holding the amount of Five Thousand Nine Hundred Seventy-Four and 46/100 Dollars (\$5,974.46), and in Account no. xxxxx2758 Compass Bank is holding the amount of Five Hundred One and 51/100 Dollars (\$501.51) (the “**Disputed Funds**”).<sup>2</sup> Compass Bank is subject to multiple claims in and to the funds on deposit in the Account.

26. Compass has been made aware of conflicting claims to the funds in said Accounts. Unfortunately, the Interpleader Defendants have not resolved the issues as to who is truly entitled to these funds. Consequently, the conflict remains that multiple parties are

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<sup>2</sup> Compass Bank also had Account Nos. xxxx4523, xxxx8435, xxxx8980, and xxxx2849, but those accounts have a \$0.00 balance.

claiming to own the funds at issue. Compass Bank is subject to conflicting claims by and between the parties regarding the Account. Compass Bank seeks to interplead the disputed funds and obtain a discharge with regard to this matter. Consequently, Compass Bank was forced to file this Petition for Interpleader.

27. Compass Bank is subject to competing claims as to who is entitled to obtain said funds. Compass Bank takes no position as to who is the proper owner of said funds. Compass Bank seeks to tender the funds into the registry of the Court so that the Court may determine the proper owner and/or controller of said funds.

28. As to the disputed funds, Compass Bank is threatened with multiple liability absent adjudication of the respective rights of the parties. Compass Bank is requesting that the Court allow Compass Bank to tender the funds into the registry of the Court and resolve the dispute between the parties.

29. Compass Bank has also incurred attorneys' fees, costs and expenses as a result of this matter. Consequently, Compass Bank also seeks to recover its attorneys' fees, costs and expenses from the funds and/or the Interpleader Defendants.

#### **ARGUMENT AND AUTHORITIES**

30. Compass Bank is an innocent stakeholder subject to conflicting claims by the different parties. A party is entitled to relief by interpleader if the party is subject to, or has reasonable grounds to anticipate, rival claims through the same funds or property. Compass Bank's deposit agreement also grants it authority to pay the funds into an appropriate court of law for resolution since there is a dispute about ownership or control of the funds.

31. Compass Bank has brought this proceeding in the nature of an interpleader. Compass Bank has brought this action in order for this Court to determine the rights of the parties relative to the funds on deposit or funds that were on deposit at Compass Bank.

32. Compass Bank filed an Interpleader pursuant to Rule 43 of the Texas Rules of Civil Procedure and Compass Bank's banking deposit agreement. Compass Bank has filed this interpleader fairly promptly.

33. A bank can pay funds into the registry of a Court and by interpleader bring into the suit all of the claimants thereto in order to protect itself from double liability. When ownership of funds is unclear, interpleader is proper. See *Thompson v. Fulton Bag and Cotton Mills*, 286 S.W.2d 411 (Tex. 1956). Compass Bank offers to unconditionally tender the disputed funds to the Court. Since Compass Bank is a disinterested stakeholder, and Compass Bank is claiming no interest in the funds, Compass Bank should be awarded its costs, expenses and attorneys' fees.

34. Under Rule 43 of the Texas Rules of Civil Procedure, a stakeholder subject to multiple claims to a fund or property may join all claimants in a lawsuit and deposit the property or fund into the Court's registry.<sup>3</sup> An interpleading party is entitled to interpleader relief if (1) the party is either subject to, or has reasonable grounds to anticipate, rival claims to the same fund or property; (2) the party has not unreasonably delayed filing an action for interpleader; and (3) the party has unconditionally tendered the funds or property into the Court's registry.<sup>4</sup> Furthermore, any reasonable doubt about a stakeholder's right to interpleader must be resolved in the stakeholder's favor.<sup>5</sup>

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<sup>3</sup> Tex. R. Civ. P. No. 43.

<sup>4</sup> *Petro Source Partners, Ltd. v. 3-B Rattlesnake Refining* (1990), Ltd., 905 S.W.2d 371, 375 (Tex. App.—El Paso 1995, writ denied).

<sup>5</sup> *Id.*

35. The purpose of an interpleader is to provide relief for a stakeholder who, without the interpleader, would be compelled to act as judge and jury at its own peril when faced with conflicting claims. See generally, *Petro Source Partners, Ltd. v. 3-B Rattlesnake Ref. (1990), Ltd.*, 905 S.W.2d 371, 378 (Tex. App.—El Paso 1995, writ denied); *Cable Communications Network, Inc. v. Aetna Cas. & Sur. Co.*, 838 S.W.2d 947, 950-51 (Tex. App.—Houston [14th Dist.] 1992, no writ); *MCZ, Inc. v. Triolo*, 708 S.W.2d 49, 57 (Tex. App.—Houston [1st Dist.] 1986, writ ref'd n.r.e.).

36. Presumably, one of the parties to this lawsuit or some other party is entitled to the funds. However, Compass Bank is unable (and has no duty) to adjudicate the ownership of the funds between the possible claimants. *Petro Source Partners, Ltd.*, 905 S.W.2d at 378. Because Compass Bank is faced with possible multiple liability to the funds, the interpleader is essential to protect Compass Bank's interest.

37. Furthermore, any reasonable doubt about Compass Bank's right to interpleader must be resolved in the bank's favor. *Citizens Nat'l Bank of Emporia, Kan. v. Socony Mobil Oil*, 372 S.W.2d 718, 722 (Tex. Civ. App.—Amarillo 1963, writ ref'd n.r.e.); *Luse v. Union City Transfer*, 324 S.W.2d 935 (Tex. Civ. App.—Waco 1959, writ dism'd).

38. Thus, by accepting the funds into its registry, this Court will ensure that there is only one recovery. Without the interpleader, Compass Bank remains potentially liable to one or all of the parties claiming the funds.

**COMPASS BANK IS ENTITLED TO RECOVER ITS  
REASONABLE ATTORNEYS' FEES FROM THE FUNDS ON DEPOSIT**

39. The Texas Supreme Court has consistently held that an "[I]nnocent stakeholder in an interpleader is entitled to attorney's fees, to be paid out of the impleaded fund." *U.S. v. Ray Thomas Gravel Co.*, 380 S.W.2d 576, 580 (Tex. 1964); *Nixon v. Malone*, 100 Tex. 250, 98 S.W.



380 (1906); *Greer v. Franklin Life Ins. Co.*, 148 Tex. 166, 221 S.W.2d 857 (1949). *See also Texas Auto Co. Et Al. v. Arbetter Et Al.*, 1 S.W.2d 334, 339 (Tex. Civ. App.—San Antonio 1920, writ dismissed w.o.j.).

40. As stated herein, Compass Bank (a) has reasonable doubts as to who is entitled to the funds; (b) seeks this interpleader in good faith; and (c) takes no position as to who is entitled to the funds. Furthermore, in order to protect itself from the threat of multiple liability, Compass Bank has been forced to incur attorneys' fees and expenses.

41. In this regard, it was necessary for Compass Bank to hire the firm of Hirsch & Westheimer, P.C. to respond to the claims being made against Compass Bank, and to file its interpleader petition. In representing Compass Bank, the undersigned firm has had to (a) investigate the factual background of this matter; (b) review and analyze claims concerning the funds at Compass Bank; (c) prepare and file this Petition for Interpleader; (d) research the applicable law; (e) communicate with opposing parties and/or their counsel; and (f) draft various versions of other various documents.

42. Compass Bank's reasonable attorneys' fees, costs and expenses to date are in excess of \$1,250.00. Moreover, Compass Bank anticipates incurring additional amounts in attorneys' fees in bringing this matter to fruition.

43. As discussed above, Compass Bank is entitled to recover these costs from the funds currently on deposit. *Ray Thomas Gravel Co.*, 380 S.W.2d at 580. The 1883 case of *Louisiana State Lottery Co. v. Clark*, sets forth the basis for awarding Compass Bank its reasonable and necessary attorneys' fees, costs and expenses:

In the case before us a mere stakeholder, without fault himself, in possession of a fund claimed entire by contending parties . . . brings the same unto Court, thereby promoting the litigation and securing the due application of the property. From the nature of

the contending claims and the circumstances of the case he incurs expense and counsel fees in bringing the fund into Court. **There is no equity in compelling him to bear these charges.**

F. 20, 21 (C.C.E.D. La. 1883) (cited by 7 CHARLES ALAN WRIGHT, ET AL., FEDERAL PRACTICE AND PROCEDURE § 1719 (2d ed. 1986)).

44. Compass Bank is an innocent, disinterested stakeholder who has sought to interplead the funds in good faith. This Court should allow the bank to deposit the funds into the Court's registry and further award Compass Bank its costs and attorneys' fees. *Ray Thomas Gravel Co.*, 380 S.W.2d at 580.

#### **REQUEST FOR DISCLOSURES**

45. Compass Bank hereby requests Interpleader Defendants to provide all disclosures required by Rule 194.2 (a)-(k) of the Texas Rules of Civil Procedure.

*[Remainder of page left intentionally blank]*

Unofficial Copy Office of Chris Daniel District Clerk

WHEREFORE, PREMISES CONSIDERED, Compass Bank, prays that this Honorable Court grant Compass Bank's request to be allowed to interplead, render judgment that Plaintiff/Counter-Defendant take nothing from Compass Bank in this suit and that Compass Bank be awarded its attorneys' fees, costs, and expenses, and such other and further relief, general or special, at law or in equity, to which Compass Bank may show itself justly entitled.

Respectfully submitted,

HIRSCH & WESTHEIMER, P.C.

By: /s/ William P. Huttenbach

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**ATTORNEYS FOR DEFENDANT COMPASS  
BANK D/B/A BBVA COMPASS,  
INCORRECTLY NAMED BBVA COMPASS  
BANCSHARES, INC.**

**CERTIFICATE OF SERVICE**

On March 7, 2018, a true and correct copy of the foregoing document was served as indicated below:

Anthony G. Buzbee  
Christopher J. Leavitt  
The Buzbee Law Firm  
JP Morgan Chase Tower  
600 Travis, Suite 6850  
Houston, Texas 77002

**Via E-Service and Email: [tbuzbee@txattorneys.com](mailto:tbuzbee@txattorneys.com)**

*/s/ William P. Huttenbach*  
\_\_\_\_\_  
William P. Huttenbach

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