CAUSE NO. DC-18-06835

FEE, SMITH, SHARP & VITULLO, LLP AND ANTHONY VITULLO	§	IN THE DISTRICT COURT
Plaintiffs,	§	
v.	§	OF DALLAS COUNTY, TEXAS
BLOCK GARDEN & McNeill, LLP, f/k/a BLOCK & GARDEN, LLP CHRISTOPHER McNEILL and STEVEN BLOCK	§	_____ JUDICIAL DISTRICT
Defendants.	§	

PLAINTIFFS' ORIGINAL PETITION AND APPLICATION FOR DECLARATORY RELIEF

Plaintiffs Fee Smith Sharp & Vitullo LLP ("FSSV") and Anthony Vitullo ("Vitullo") (collectively, "Plaintiffs") file this Original Petition against Defendants Block, Garden & McNeill, LLP f/k/a Block & Garden, LLP, Christopher McNeill, and Steven Block and would show the Court as follows:

I. INTRODUCTION

Plaintiffs represented Stephen B. Hopper and Laura S. Wassmer ("Hopper and Wassmer") in a lawsuit, which resulted in a highly publicized jury verdict against JP Morgan Chase ("Chase") in October 2017, and an eventual settlement not long thereafter. In that litigation ("Chase Lawsuit"), Plaintiffs represented Hopper and Wassmer on a contingency basis pursuant to a contract between Plaintiffs on the one hand and Hopper and Wassmer on the other hand. Defendants claim to represent Hopper and Wassmer, but stopped working for Hopper and Wassmer on the Chase Lawsuit in November 2015. In fact, Defendants performed virtually no legal services in

representing Hopper and Wassmer throughout the duration of the Chase Lawsuit.

Defendants now seek to recover an equal portion of Plaintiffs' contingency fee, not based on any legal work that Defendants performed at the trial (that they never even attended), but instead based on a novel theory that Defendants hired Plaintiffs on a separate contingency fee agreement to perform legal services for Hopper and Wassmer. But Defendants' theory summarily fails because Plaintiffs and Defendants never agreed to a written and enforceable contingency fee contract to provide legal services for Hopper and Wassmer (nor did Hopper and Wassmer consent to such a fee sharing arrangement). In addition, Defendants' alleged contingency fee agreement with Hopper and Wassmer is void *ab initio* because it does not comply with the fee sharing rules (required under Rule 1.04(f) of the Texas Rules of Disciplinary Conduct) and, moreover, the agreement upon which Defendants rely was terminated "for cause" by Hopper and Wassmer in November 2015.

Plaintiffs did not agree to a joint venture contingency arrangement with Defendants in the Chase Lawsuit; and, furthermore, the lack of a signature of Plaintiffs to Defendants' agreement with Hopper and Wassmer is *ipso facto* dispositive of same. Indeed, Plaintiffs were never even approached by Defendants with such an offer. There is absolutely no contract between Defendants and Plaintiffs that could provide the basis for any percentage split fee for Defendants. To this end, Defendants purported attempt to bind Plaintiffs to a hybrid contingency fee contract that Defendants unilaterally created and that Plaintiffs neither signed nor even saw at the time of formation violates the Texas Government Code's requirement that an attorney sign a contingency fee contract in order for it to be enforceable—that is notwithstanding Rule 1.04(f)'s fee

division requirement applicable to contingency agreements when multiple law firms undertake one, consolidated representation. Defendants are fully aware that they have no contract with Plaintiffs, and no right to assert any right to a contingency fee from the settlement of a jury verdict from a trial that they did not attend—much less prosecute.

Defendants knew that Hopper and Wassmer had hired Plaintiffs on a contingency basis to represent them in the Chase Lawsuit. Defendants knew that they had been terminated "for cause" by Hopper and Wassmer in November 2015 in the Chase lawsuit; and, furthermore, documentary evidence establishes that Defendants knew their obligations to Hopper and Wassmer had not only been marginalized, but their role in multiple pieces of litigation had been re-assigned to a *separate* lawsuit altogether involving the partition of assets ("Partition Lawsuit").

Distilled to its essence, in November 2015, Hopper and Wassmer terminated Block and Garden for cause in the Chase Lawsuit. At that time, Christopher McNeill, a Block & Garden partner, agreed that Defendants would only represent Hopper and Wassmer with respect to the partition of their father's Estate. McNeil, on behalf of and in furtherance of Block & Garden, further agreed that Block and Garden would no longer represent Hopper and Wassmer in the Chase Lawsuit. McNeill also consented to Hopper and Wassmer's retention of Plaintiffs in a separate contingency fee contract, regarding the prosecution of the Chase Lawsuit. The parties' understanding was memorialized in a November 14, 2015, electronic communication.

Despite the fact that Defendants have no right to a contingency fee on the Chase Lawsuit (either from Hopper and Wassmer or from Plaintiffs), Defendants have and continue to tortiously interfere with Plaintiffs' contract with Hopper and Wassmer by

asserting their alleged right to a fee based upon an agreement, which is facially void and clearly in violation of Rule 1.04(f). Hopper and Wassmer have apparently received Defendants' demand for a fee; and, consequently, have refused to compensate Plaintiffs for their legal services. Thus, Defendants have not only illegally interfered with Plaintiffs' contract with Hopper and Wassmer, that interference has successfully prevented Plaintiffs from being duly compensated for their legal services, which have been and were fully performed in the Chase Lawsuit. Moreover, despite the fact that Defendants never retained Plaintiffs, nor did Defendants perform any legal services at trial, Defendants still maintain that they are entitled to a contingency fee, which has no basis in either fact or in law.

An actual and justiciable controversy exists between Plaintiffs and Defendants. Accordingly, Plaintiffs seek a declaration and findings that establish: (i) Defendants' purported contingency agreement is void *ab initio* because it fails Rule 1.04(f)'s fee division requirements; (ii) there is no contract between Plaintiffs on the one hand and Defendants on the other hand—and certainly no such enforceable contract, given the absence of any signature to same on behalf of any Plaintiff (TEX. GOV'T CODE ANN. § 82.065(a) (Vernon 2014)); (iii) and, finally, to risk stating the obvious, there is certainly no arbitration agreement whatsoever between Plaintiffs and Defendants.

II.
PARTIES

Plaintiffs FSSV and Vitullo are citizens of the state of Texas.

Defendant **Block, Garden & McNeill, LLP f/k/a Block & Garden, LLP** is a Texas limited liability partnership, with its principal place of business located at **5949 Sherry Lane, Suite 900, Dallas, TX 75225**. It can be served with process by serving

its named principal, Steven Block.

Defendant **Christopher McNeil** is a citizen of Texas who can be served with process by in hand service at his place of business located at **5949 Sherry Lane, Suite 900, Dallas, TX 75225**.

Defendant **Steven Block** is a citizen of Texas who can be served with process at his place of business located at **5949 Sherry Lane, Suite 900, Dallas, TX 75225**.

III.
JURISDICTION AND VENUE

Subject matter jurisdiction is properly vested in this Court. Jurisdiction is proper in this Court as the damages sought by Plaintiffs are within the jurisdictional limits of this Court.

Pursuant to Texas Rule of Civil Procedure 47, Plaintiffs seek monetary relief in excess of $1,000,000.00, which is within the jurisdictional limits of this Court.

This Court has personal jurisdiction over Defendants because they do business in the state of Texas.

Venue is proper in Dallas County under Texas Civil Practice and Remedies Code §15.002 as all or a substantial portion of the events giving rise to the claim(s) occurred in whole or in part in Dallas County. Venue is also proper in Dallas County, Texas, pursuant to § 15.002 because Dallas County is the county of residence for Defendant Block & Garden.

IV.
FACTUAL BACKGROUND

In 2012, Hopper and Wassmer approached Vitullo of FSSV to inquire about legal services related to the Estate of their deceased father, Max Hopper. Vitullo introduced

Hopper and Wassmer to Defendants. Thereafter, Defendants purportedly executed a fee agreement with Hopper and Wassmer, which provided that Defendants would represent Hopper and Wassmer with respect to Pre-Trial Issues only for a flat fee ("the Pre-Trial Issues Fee Agreement").

Critically, neither FSSV nor Vitullo were parties to the Pre-Trial Issues Fee Agreement between Defendants and Hopper/Wassmer. However, Plaintiffs have subsequently been provided a copy of this Pre-Trial Issues Fee Agreement. This Pre-Trial Issues Fee Agreement stipulated that Defendants would receive a flat fee for their legal services in the amount of $100,000. Thereafter, Defendants are believed to have received a legal fee for performing these purported services, and billed Hopper and Wassmer for their fee, per the express terms of the Pre-Trial Issues Fee Agreement.

The Pre-Trial Issues Fee Agreement included a provision that purported to convert the flat fee services agreement to a hybrid contingency fee agreement in the event that Hopper and Wassmer's claims went to trial and there was a successful recovery in their favor. Critically, the terms of this hybrid contingency fee agreement were that Steven Block and Christopher McNeill would perform legal services at a rate of 50% of their normal rate (as opposed to the 100% charge for Pre-Trial Issues), but they would also receive 20% of the Client's gross recovery "if [Block & Garden] is successful in recovering money or anything of value for the Client after trial begins…." This purported hybrid contingency fee agreement contemplated that Defendants would "retain on your behalf the services of Anthony L. Vitullo with Fee, Smith, Sharp & Vitullo, LLP who current hourly rate is $500." The purported hybrid contingency fee agreement

also stated that if Defendants did hire Mr. Vitullo, Defendants would be responsible for paying his legal fee.

However, none of these events ever occurred. At no time did Defendants hire FSSV or Vitullo. In fact, there was zero discussion of this alleged retention. Additionally, the purported contingency (that is, Block & Garden successfully recovering money or anything of value for Hopper and Wassmer) never happened, **because Block & Garden never appeared at trial nor did any work in the Chase Lawsuit after November 2015.** As such, Block & Garden did not "recover" anything. Moreover, at no time did Defendants compensate either FSSV or Vitullo any hourly rate (or 50% hourly rate) for the hours of work Vitullo and other attorneys employed with FSSV performed over the course of more than two years.

Defendants, despite their representations to Hopper and Wassmer, had no right to hire Vitullo or FSSV, no authority to hire Vitullo or FSSV, and never made an effort to hire Vitullo or FSSV. More importantly, Defendants never entered into any collateral agreement with either FSSV or Mr. Vitullo to represent Hopper and Wassmer under any fee agreement Defendants had or may have had with Hopper and Wassmer.

It is undisputed that these events never materialized. In November 2015, Defendants willingly agreed and represented to all parties that their engagement would be limited to Pre-Trial Issues, or, exactly what was set forth in Defendants' Pre-Trial Issues Fee Agreement. Defendants, in fact, knew and freely consented to Hopper and Wassmer's independent retention of Plaintiffs, including Anthony Vitullo of FSSV, specifically.

Defendants completed their legal services related to the Partition Lawsuit in the spring of 2016. To this end, Defendants' invoices (at least the ones that have been made available to Plaintiffs) reflect no additional legal services were provided to Hopper and Wassmer after spring 2016. Defendants' work was completed at that time; and no further legal work is believed to have been provided after this date. More than one year later, in the fall of 2017, Hopper and Wassmer's claims proceed to trial against Chase. Consistent with their November 2015 agreement, Defendants did not appear for trial or otherwise assist in the trial, which lasted more than one month. At no time during the trial did Defendants offer to compensate either Vitullo or FSSV any legal fee, whether reduced or otherwise, pursuant to any alleged contractual agreement to hire Plaintiffs. The only work performed by Defendants on the Chase Litigation before November 2015 was attending an isolated hearing, and a mediation.

In December 2017, Defendants demanded that Plaintiffs turn over legal fees allegedly owed to Defendants. The purported reason for this demand was a hybrid contingent fee agreement for "services performed at trial." Defendants claimed that they had hired Anthony Vitullo, though they declined to produce any details of this alleged retention. Defendants also omitted any reference to the November 2015 agreement that their services would be limited to the partition litigation. Defendants also failed to explain why they ceased performing the pre-trial services set forth in the Pre-Trial Issues Fee Agreement. Defendants also omitted the fact that they never showed up for trial.

Importantly, Section 82.065(a) of the Texas Government Code requires that any contingency fee agreement must be signed by both the attorney and the client. The

only contingency fee agreement signed by Plaintiffs is the contingency fee agreement between Plaintiffs and Hopper and Wassmer, not the Pre-Trial Issues Fee Agreement that Defendants claim entitles them to a hybrid contingency fee.

Rule 1.04(f) of the Texas Disciplinary Rules of Professional Conduct plainly states that a contingency fee contract that involves a fee sharing agreement or fee division agreement between multiple law firms must specify and explain the basis for this fee sharing arrangement—and the compensation must be commensurate with the services provided by each Firm—and there must be signatures of all parties and informed consent by the Client(s). The Pre-Trial Issues Fee Agreement that Defendants claim entitles them to a hybrid contingency fee provision fails to satisfy any of these requirements. In fact, the contingency upon which Defendants claim an interest is not even in the body of the contract; rather, its in an exhibit attached to that agreement separate from the signature page.

Germane to all of this is a temporary injunction that was recently granted in Plaintiffs' favor in the underlying case where the Chase Lawsuit was filed. *See* Exhibit "A." The probate court where the Chase Lawsuit was filed and ultimately tried has already found that Plaintiffs have shown a probability of success on the merits and that they have established that they are entitled to be paid for the full value of their contingency fee, especially given that the work has been completed.

V.
CLAIMS FOR RELIEF

Count I—Application for Declaratory Relief
(§ 37.001 TEX. CIV. PRAC. & REM. CODE et seq.)

Plaintiffs seek a declaratory judgment pursuant to the Texas Uniform Declaratory

Judgment Act ("UDJA"), Texas Civil Practice & Remedies Code Section 37.001 et seq. An actual and justiciable controversy exists and has arisen between Plaintiffs and Defendants. Plaintiffs seek a declaratory judgment against Defendants pursuant to the UDJA declaring the rights, status, and other legal relations between and among these parties regarding the payment of legal fees, if any. As such, the Court should declare that: (1) Plaintiffs are not a party to any contingency fee contract with Defendants; (2) Defendants never retained Plaintiffs for services related to Hopper and Wassmer's claims against Chase; (3) Defendants and Plaintiffs have no contractual agreement to perform legal services related to Hopper and Wassmer's claims against Chase; (4) Defendants have no legal rights to the proceeds of any settlement obtained by Hopper and Wassmer via their post-trial settlement with Chase because Defendants failed to perform any legal services that are compensable on a contingency fee basis pursuant to any such contract; (5) Defendants have no legal rights to the proceeds of any settlement obtained by Hopper and Wassmer via their post-trial settlement with Chase because they waived and/or are estopped from claiming an interest; (6) Defendants have no legal rights to the proceeds of any settlement obtained by Hopper and Wassmer via their post-trial settlement with Chase because any purported contingency in the purported contract never occurred; and, most importantly, (7) the hybrid contingency provision in Defendants' contract is void *ab initio* because it fails to comply with Rule 1.04(f) of the Texas Disciplinary Rules of Professional Conduct and Section 82.065(a) of the Texas Government Code.

Count II—Tortious Interference with Plaintiffs' Contract and Business Relationship(s) with Hopper & Wassmer

Plaintiffs have a valid and subsisting contract with Hopper and Wassmer. Defendants knew of this contract existed as early as November of 2015. Defendants, however, willfully and intentionally interfered with this contract by making a false claim to settlement proceeds based on an agreement that is facially void and by claiming that FSSV's valid contingency agreement with Hopper and Wassmer was invalid because Defendant's agreement took precedence over FSSV's agreement. Defendants' interference with Plaintiffs' contract with Hopper and Wassmer proximately caused Plaintiffs' injury, and Plaintiffs have incurred actual damages and/or losses including attorney's fees far in excess of the minimum jurisdictional limits of this Court as a result of same for which they now sue.

Count III—Common Law Fraud (affirmatively and by omission) and Fraudulent Inducement

Defendants made misrepresentations (both affirmatively and by omission) to Plaintiffs; Defendants knew that Plaintiffs would rely on those acts and/or omissions; Plaintiffs did in fact rely and reasonably rely on their mutual understanding of the parties' agreements when Plaintiffs prosecuted the Chase Lawsuit to completion; and "but for" Defendants' misrepresentations to Plaintiffs, the latter have been damaged.

In November 2015, Defendant Christopher McNeill, acting on behalf of and with the authority of Defendant Block & Garden, represented in a meeting with Vitullo, Stephen Hopper, and others that (1) he would represent Hopper and Wassmer solely on the partition lawsuit and not for a trial of Chase; and (2) he understood that FSSV would enter into a direct contingency contract with FSSV. However, Defendants'

McNeill and Block & Garden ostensibly had a plan to violate these representations. Defendants McNeill and Block & Garden failed to disclose that they would later falsely claim that (1) they represented Hopper and Wassmer during the trial of the Chase Lawsuit; (2) they would falsely claim they hired Vitullo for that trial; and (3) that they would deny ever knowing that FSSV had a direct contingency contract with FSSV. When Defendants' McNeill and Block & Garden made these representations and omissions, they knew that such representations and omissions were false and material and/or made such representations and omissions recklessly, as a positive assertion, without knowledge of their truth. Defendants made these representations with the intent that Plaintiffs rely on these representations. Plaintiffs relied on such representations and omissions in contracting directly with Hopper and Wassmer and by trying the Chase Lawsuit to verdict and through settlement. Such representations caused Plaintiffs' injury, for which they now sue.

ATTORNEY'S FEES UNDER SECTION 37.009

Pursuant to Section 37.009 of the Texas Civil Practice & Remedies Code, Plaintiffs seek to recover their attorneys' fees upon which this Court may and should find to be "equitable" and "just."

ACTUAL DAMAGES, SPECIAL DAMAGES, & CONSEQUENTIAL DAMAGES

Plaintiffs seek actual damages, special damages, consequential damages, and attorney's fees. Plaintiffs are entitled to punitive damages in an amount to be determined by the trier of fact.

CONDITIONS PRECEDENT

All conditions precedent to Plaintiffs' right of recovery have been performed, have occurred, or have been waived.

JURY DEMAND

Plaintiffs hereby demand a jury trial on their tort claims. TEX. R. CIV. P. 216.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request judgment in their favor against Defendants as follows:

A. Defendants shall compensate Plaintiffs for their actual, special, and consequential damages;

B. Plaintiffs shall be granted Declaratory Relief as set forth herein;

C. Defendants shall compensate Plaintiffs for their attorney's fees;

D. Defendants shall pay prejudgment and post-judgment interest at the maximum legal rate;

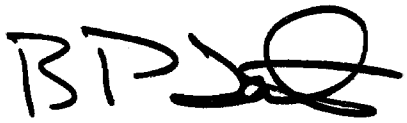
E. Plaintiffs shall recover their costs in bringing this action; and

F Plaintiffs shall recover any and all such other relief whether in law or in equity upon which this this Court may deem just and appropriate.

Dated this 24th day of May, 2018.

Respectfully Submitted,

BRIAN LAUTEN, P.C.



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AND ANTHONY VITULLO

CAUSE NO. PR-11-3238-1

IN RE: ESTATE OF MAX D. HOPPER, DECEASED,	§	IN THE PROBATE COURT
JO N. HOPPER, Intervenor,	§	
v.	§	NO. 1
JPMORGAN CHASE BANK, N.A., STEPHEN B. HOPPER, and LAURA S. WASSMER, Defendants.	§	OF DALLAS COUNTY, TEXAS

JOHN L. MALESOVAS, d/b/a MALESOVAS LAW FIRM, and FEE, SMITH, SHARP & VITULLO, LLP Intervenors,	§	
v.	§	
STEPHEN B. HOPPER, LAURA S. WASSMER, individually and as Beneficiaries of the ESTATE OF MAX D. HOPPER, DECEASED, the ESTATE OF MAX D. HOPPER, DECEASED, JPMORGAN CHASE BANK, N.A., Defendants.	§	

TEMPORARY INJUNCTION ORDER

Came to be heard on the 24TH day of April 2018, after appropriate notice to the parties and after the parties presented arguments, Fee Smith Sharp & Vitullo, LLP and John L. Malesovas d/b/a Malesovas Law Firm's (collectively, "Intervenors") *Verified Petition(s) in Intervention, Application for Temporary Restraining Order, Temporary Injunction, and Application for Declaratory Relief* against, *inter alia*, Stephen Hopper and

EXHIBIT A

Laura Wassmer, individually and as beneficiaries of the Estate of Max D. Hopper, deceased, (hereinafter jointly "Clients") and JPMorgan Chase Bank, N.A. (hereinafter "JPM") (Clients and JPM hereinafter jointly, "Defendants" with respect to the claims now pending in this Intervention).

The Court, after considering the *Intervenors' Collective Verified Original Petition in Intervention, Application for Temporary Restraining Order, Temporary Injunction, and Application for Declaratory Relief,* the evidence submitted by Intervenors *in camera*, the relevant exhibits, the arguments of counsel, concludes that—unless immediately restrained, Defendants will irreparably injure Intervenors.

This Court has subject matter jurisdiction over the dispute brought before it under both, TEX. ESTATES CODE ANN. § 32.007 et seq. (Vernon 2014), *and*, TEX. CIV. PRAC. & REM. CODE § 37.005 et seq. (Vernon 2014) (authorizing declaratory judgment actions in probate court when such relief is germane to an Estate).

Intervenors respective Pleas and application for Injunctive Relief are timely filed, given that this Court has yet to sign a judgment; and, therefore, retains plenary power over this proceeding. *See* TEX. R. CIV. P. 60 et seq.

This Court has, preliminarily, taken judicial notice, pursuant to Rule 201 of the Texas Rules of Evidence, of the following facts that, in reasonable probability, appear to be true at this preliminary stage of the proceeding:

1.) In, around, or about November of 2015, Clients executed a valid and enforceable contingency agreement ("CA") with Intervenors;

2.) On or about April 5, 2018, attorneys for Clients and JPM appeared before this Court and announced, without revealing any of the substantive terms, that a confidential settlement had been reached between them in the underlying dispute pending in this Court (hereinafter "Settlement");

3.) On or about the same day, April 5, 2018, but—literally what appears to have been within minutes after the Court was informed that a settlement had been reached by the parties in this underlying dispute—Clients terminated their CA with Intervenors by and through their attorney, James Pennington;

4.) Intervenors have filed what, by all accounts, appears to be a valid and enforceable First Party Attorney's Fees Lien in the proceeds of the Settlement;

5.) Intervenors fully performed; or, at the very least, substantially and materially performed all of their duties, responsibilities, and obligations under the CA at or before the time Clients terminated the CA—as those legal terms are meant in, *Tillery & Tillery v. Zurich Ins. Co.*, 54 S.W.3d 356, 360-61 (Tex. App.—Dallas 2018, no pet.), *Enochs v. Brown*, 872 S.W.2d 312, 317 (Tex. App.—Austin 1994, no writ), *disapproved of on unrelated grounds*, by *Roberts v. Williamson*, 111 S.W.3d 113 (Tex. 2003), and *Mandell & Wright*, 441 S.W.2d 841, 847 (Tex. 1969); and

6.) Given the timing of the termination of Intervenors, Clients are estopped, quasi-estopped, and/or have waived any and all defenses, if any, that could or would be lodged to the CA or the quality of the legal services performed by Intervenors.

The Court finds that Clients have admitted that some of the settlement funds belong to Intervenors, but Clients refuse to identify the amount that belongs to Intervenors and refuse to allow the undisputed amount that belongs to Intervenors to be paid to Intervenors. Based on this, as well as the Court's findings above, Intervenors are entitled to immediate payment of a portion of the settlement funds once they become due and payable under the terms of the settlement. The Court finds that within hours after the Court heard Intervenors' Application for a Temporary Restraining Order where Intervenors were asking this Court to protect the settlement funds in dispute pending the outcome of their Petition in Intervention and after the Court took the matter under advisement, Clients executed a settlement agreement with JPM which required JPM to wire transfer the settlement funds to any location designated by Clients, which would necessarily include a foreign bank account, and further required Intervenors to waive their lien on the settlement funds and to withdraw their Petition in Intervention claiming an interest in the settlement funds, and that Clients still refused to pay

Intervenors any of the settlement funds. The Court finds that this action by Clients was designed to attempt to circumvent this Court's inherent power to protect the disputed funds and to circumvent Intervenors' lien on the Settlement funds.

The Court finds that based on all of the foregoing and all of the other evidence and stipulations presented, the settlement funds are in danger of being lost or depleted unless this Court exercises its inherent power to protect the settlement funds pending the outcome of Intervenors' Petition in Intervention.

Based upon these preliminary findings, this Court is of the opinion that Intervenors have established a probability of success on the merits on their application for, *inter alia*, declaratory relief. *See* TEX. CIV. PRAC. & REM. CODE § 37.004 et seq. (Vernon 2014). This Court is of the opinion that, unless restrained, one or more Defendants are likely to cause permanent damage to Intervenors, should they be allowed to transfer, hypothecate, assign, or take title to Intervenors' interest in the settlement proceeds before the pleas in Intervention are adjudicated on the merits. Such harm would be irreparable and injury would be imminent because this Court is of the opinion that there is no showing; or, in the alternative, an inadequate showing that Defendants could timely and immediately pay the disputed funds to Intervenors, should Intervenors ultimately prevail in this proceeding, and because Intervenors have a security interest in and lien upon a portion of the settlement proceeds which would be eviscerated by allowing Clients to dispose of 100% of the settlement proceeds as they saw fit and/or by risk that such funds will be lost or depleted or otherwise disposed of. Moreover, given the Court's preliminary findings set forth above in (i)-(vi), Intervenors have established a property right and secured interest in the proceeds at issue, and the loss of such funds and property right would leave Intervenors with no adequate remedy at law.

The Court is, **THEREFORE**, of the opinion that Intervenors are entitled to the issuance of an Order of Temporary Injunction and that such an Order is necessary to protect Intervenors' rights. This **ORDER** is necessary because of the immediate need to enforce the security interest and lien which Intervenors have in a portion of the settlement proceeds and to stop the wrongful flow of funds in the near future from being disseminated to either Clients or their attorneys, or some other third party subject to

Clients' direction and control, upon which Intervenors would have no adequate remedy at law. Without intervention by this Court, Intervenors' property right, that is Intervenors' security interest in and lien upon the settlement proceeds, would be destroyed and there would be no way to restore that property right in the Settlement proceeds themselves.

It is therefore **ORDERED, ADJUDGED**, and **DECREED** that Defendants, Stephen Hopper, Laura Wassmer, and JPMorgan Chase, N.A., and any of his, her, their, or its agents, servants, employees, successors, assigns and those persons in active concert or participation therewith, must:

1) Deposit all of the settlement proceeds due to Stephen B. Hopper and Laura S. Wassmer, individually and as beneficiaries of the Estate of Max Hopper, Deceased, into a safekeeping account with JPMorgan Chase Bank, NA, to be treated as a deposit in the registry of the Court, and to be held in trust until further order of this Court. Funds in this safekeeping account shall be withdrawn only upon Order of this Court;

2) The parties are **ORDERED** to preserve and prevent the destruction of all documents, including electronic data, emails, and notes, that relate in any way to the matters and claims set forth in the Intervenors' respective Pleas on file—and, moreover, all electronic storage devices must be imaged and preserved.

IT IS FURTHER ORDERED that the $10,000 corporate or surety cash bond currently deposited with the appropriate clerk of this Court shall remain in place.

IT IS FURTHER ORDERED that trial in this matter is set for October 1, 2018 at 9:30 o'clock a.m., All Parties are Ordered to appear for a scheduling conference on or before June 15, 2018.

Signed and issued this the 24th day of April 2018, at 2:05 o'clock p.m.

JUDGE PRESIDING

PR 11-3238-1