

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 1:20-cv-24326-SCOLA**

LATOYA CLARK, an individual;
LUXX LASHES BY LAY, LLC, a Florida Limited
Liability Company; TASTETUNUP, LLC, a Florida
Limited Liability Company; and SQUEEZE-IT CORP.,
a Florida Corporation,

Plaintiffs/Counter-Defendants,

v.

JPMORGAN CHASE BANK, N.A.,

Defendant/Counter-Plaintiff/
Third-Party Plaintiff,

v.

KABBAGE, INC.

Third-Party Defendant.

**JPMORGAN CHASE BANK, N.A.’S ANSWER AND AFFIRMATIVE DEFENSES
TO PLAINTIFFS’ COMPLAINT, AND COUNTERCLAIM AND
THIRD-PARTY COMPLAINT IN INTERPLEADER,
OR IN THE ALTERNATIVE, FOR DECLARATORY JUDGMENT**

Defendant JPMORGAN CHASE BANK, N.A. (“Chase”), pursuant to Federal Rules of Civil Procedure 12, 13, 14, and 22, hereby files its Answer and Affirmative Defenses to the Complaint filed by Plaintiffs LATOYA CLARK (“Clark”), LUXX LASHES BY LAY, LLC (“Luxx”), TASTETUNUP, LLC (“Tastetunup”), and SQUEEZE-IT CORP. (“Squeeze-It,” and together with Clark, Luxx, and Tastetunup, the “Plaintiffs”), and a Counterclaim and Third-Party Complaint in Interpleader, or in the Alternative for Declaratory Judgment, against Plaintiffs and Third-Party Defendant KABBAGE, INC. (“Kabbage”), and states as follows:

GENERAL DENIAL

Except as otherwise expressly stated herein, Chase denies each and every allegation in the Complaint, including, without limitation, any allegations contained in the headings, subheadings, or footnotes. Further, Chase reserves the right to seek to amend and/or supplement its Answer as may be necessary and appropriate.

ANSWER

1. Chase admits only that Plaintiffs have filed this action relating to certain accounts and that they assert claims relating to those accounts. Chase denies the remaining allegations of Paragraph 1.

2. Chase is without sufficient knowledge or information to form a belief as to the truth of Plaintiffs' allegations in Paragraph 2 regarding Plaintiffs, the loans, and the businesses, and therefore, Chase denies those allegations. Chase admits that a restriction was placed on certain accounts based on available information, including but not limited to, information relating to Plaintiffs' businesses and eligibility for Paycheck Protection Program ("PPP") loan proceeds deposited to their Chase accounts and information being provided by Plaintiffs that was not consistent with publicly available and other information. Chase denies the remaining allegations of Paragraph 2.

3. Chase admits that, among other things, one of the purposes of the PPP was to provide funds to eligible businesses for certain specified purposes, as set forth more fully in the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") and applicable regulations. Chase denies the remaining allegations of Paragraph 3.

4. Chase denies the allegations of Paragraph 4.

5. Chase is without sufficient knowledge or information to form a belief as to the truth of Plaintiffs' allegations in Paragraph 5 regarding other financial institutions, and therefore, Chase denies those allegations. Chase admits that Paragraph 5 and Exhibit A purport to reference copies of articles and Chase denies the allegations of Paragraph 5 to the extent that they are contrary to or inconsistent with the articles themselves or allege any discrimination by Chase. Chase denies the remaining allegations of Paragraph 5.

6. Chase is without sufficient knowledge or information to form a belief as to the truth of Plaintiffs' allegations in Paragraph 6, and therefore, Chase denies those allegations.

7. Chase is without sufficient knowledge or information to form a belief as to the truth of Plaintiffs' allegations in Paragraph 7, and therefore, Chase denies those allegations.

8. Chase is without sufficient knowledge or information to form a belief as to the truth of Plaintiffs' allegations in Paragraph 8, and therefore, Chase denies those allegations.

9. Chase is without sufficient knowledge or information to form a belief as to the truth of Plaintiffs' allegations in Paragraph 9, and therefore, Chase denies those allegations.

10. Chase admits that it is a national banking association with its main office in Columbus, Ohio. Chase admits that it has branches in Florida.

11. Chase admits the allegations in Paragraph 11.

12. Chase admits the allegations in Paragraph 12.

13. Chase admits that it has branches in Florida. Chase is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 13 regarding Plaintiffs, and therefore, Chase denies those allegations.

14. Chase admits that the Small Business Act (“SBA”) was enacted in 1953, which speaks for itself. Chase denies the allegations of Paragraph 14 to the extent they are contrary to or inconsistent with the SBA.

15. Chase responds to the allegations of Paragraph 15 by stating that the SBA speaks for itself. Chase denies the allegations of Paragraph 15 to the extent they are contrary to or inconsistent with the SBA.

16. Chase admits that the CARES Act was enacted on March 27, 2020, which speaks for itself. Chase denies the allegations of Paragraph 16 to the extent they are contrary to or inconsistent with the CARES Act.

17. Chase admits that the PPP is found at Section 1102 of Title 1 of the CARES Act, which speaks for itself. Chase denies the allegations of Paragraph 17 to the extent they are contrary to or inconsistent with the CARES Act.

18. Chase admits that the CARES Act and regulations thereunder define an “eligible recipient,” “covered loan,” and other terms. Chase denies the allegations of Paragraph 18 to the extent they are contrary to or inconsistent with the CARES Act and regulations.

19. Chase admits that the CARES Act and regulations thereunder set forth criteria on how proceeds of a PPP loan may be spent. Chase denies the allegations of Paragraph 19 to the extent they are contrary to or inconsistent with the CARES Act and regulations.

20. Chase admits that Exhibit B purports to be a copy of an announcement that appeared online, which speaks for itself. Chase denies the allegations of Paragraph 20 to the extent they are contrary to or inconsistent with Exhibit B, which speaks for itself.

21. Chase denies the allegations of Paragraph 21 to the extent they are contrary to or inconsistent with Exhibit B, which speaks for itself.

22. Chase denies the allegations of Paragraph 22 to the extent they are contrary to or inconsistent with Exhibit B, which speaks for itself.

23. Chase admits that Exhibit C appears to be a copy of a Chase Deposit Account Agreement and Privacy Notice (the "DAA"). Chase denies the allegations of Paragraph 23 to the extent they are contrary to or inconsistent with Exhibit C, which speaks for itself. Chase denies the remaining allegations of Paragraph 23.

24. Chase admits only that on July 1, 2020, Tastetunup's account with Chase received a deposit in the amount of \$132,400.00, and an additional deposit in the amount of \$10,000.00 on July 9, 2020. Chase is without sufficient knowledge or information to form a belief as to the truth of Plaintiffs' remaining allegations in Paragraph 24, and therefore, Chase denies those allegations. Chase also denies that the alleged loans amounts, when combined, add up to the total loan amount alleged in Paragraph 24.

25. Chase admits only that on July 1, 2020, Squeeze-It's account with Chase received a deposit in the amount of \$451,000.00. Chase is without sufficient knowledge or information to form a belief as to the truth of Plaintiffs' remaining allegations in Paragraph 25, and therefore, Chase denies those allegations.

26. Chase admits that there is a restriction on accounts held by Plaintiffs and that Plaintiffs do not have access to the funds in those accounts. Chase denies the remaining allegations of Paragraph 26.

27. Chase is without sufficient knowledge or information to form a belief as to the truth of Plaintiffs' allegations in Paragraph 27, and therefore, Chase denies those allegations.

28. Chase denies the allegations in Paragraph 28.

29. Chase denies the allegations and characterizations of Paragraph 29 but admits that it made repeated requests to Plaintiffs for business documentation. Responding further, Chase states that Plaintiffs have not provided the requested information.

30. Chase admits that Plaintiffs have provided some information to Chase, but denies that the information provided was thorough, complete, or accurate. Chase further denies that all of the information requested by Chase has been provided. Chase denies the remaining allegations of Paragraph 30.

31. Chase denies the allegations in Paragraph 31.

32. Chase denies the allegations in Paragraph 32.

33. Chase admits that Exhibit D purports to be copies of letters that counsel for Plaintiffs sent to Chase. Chase denies the allegations of Paragraph 33 to the extent they are contrary to or inconsistent with Exhibit D, which speaks for itself. Chase denies the remaining allegations of Paragraph 33.

34. Chase denies the allegations in Paragraph 34.

35. Chase is without sufficient knowledge or information to form a belief as to the truth of Plaintiffs' allegations in Paragraph 35, and therefore, Chase denies those allegations.

36. Chase denies the allegations in Paragraph 36.

**COUNT I
VIOLATION OF THE EXPEDITED FUNDS AVAILABILITY ACT**

37. Chase repeats and realleges its answers to the allegations in Paragraphs 14 through 36 as if set forth fully herein.

38. Chase admits that Congress enacted the Expedited Funds Availability Act ("EFAA"). Chase denies the allegations of Paragraph 38 to the extent they are contrary to or inconsistent with the EFAA.

39. Chase admits that the EFAA defines the term “account.” Chase denies the allegations of Paragraph 39 to the extent they are inconsistent with or contrary to the EFAA.

40. Chase admits that the EFAA defines the term “participant.” Chase denies the allegations of Paragraph 40 to the extent they are inconsistent with or contrary to the EFAA.

41. Chase admits that Paragraph 41 purports to quote 12 U.S.C. § 4003(f)(1). Chase denies the allegations of Paragraph 41 to the extent they are inconsistent with or contrary to 12 U.S.C. § 4003(f)(1).

42. Chase admits that Paragraph 42 purports to quote 12 U.S.C. § 4010(a). Chase denies the allegations of Paragraph 42 to the extent they are inconsistent with or contrary to 12 U.S.C. § 4010(a).

43. Chase denies the allegations of Paragraph 43.

44. Chase denies the allegations of Paragraph 44.

45. Chase denies the allegations of Paragraph 45.

46. Chase denies the allegations of Paragraph 46.

47. Chase denies the allegations of Paragraph 47.

WHEREFORE, having fully answered Count I, Chase requests that judgment be entered in Chase’s favor and against Plaintiffs, that Chase be awarded its costs, and that the Court enter such other and further relief as it deems appropriate.

**COUNT II
GROSS NEGLIGENCE**

48. Chase repeats and realleges its answers to the allegations in Paragraphs 14 through 36 as if set forth fully herein.

49. Chase admits that deposit accounts with Chase customers are governed by a DAA. Chase denies the allegations of Paragraph 49 to the extent they are contrary to or inconsistent with a DAA. Chase denies the remaining allegations of Paragraph 49.

50. Chase denies that it breached any obligation to Plaintiffs. Chase denies the remaining allegations of Paragraph 50.

51. Chase denies that it breached any obligation to Plaintiffs. Chase denies the remaining allegations of Paragraph 51.

52. Chase denies that it breached any obligation to Plaintiffs. Chase denies the remaining allegations of Paragraph 52.

53. Chase denies the allegations of Paragraph 53.

54. Chase denies the allegations of Paragraph 54.

55. Chase denies the allegations of Paragraph 55.

56. Chase denies the allegations of Paragraph 56.

WHEREFORE, having fully answered Count II, Chase requests that judgment be entered in Chase's favor and against Plaintiffs, that Chase be awarded its costs, and that the Court enter such other and further relief as it deems appropriate.

**COUNT III
DISCRIMINATION IN VIOLATION OF 42 U.S.C. § 1981**

57. Chase repeats and realleges its answers to the allegations in Paragraphs 14 through 36 as if set forth fully herein.

58. Chase admits that Paragraph 58 purports to quote 42 U.S.C. § 1981(a). Chase denies the allegations of Paragraph 58 to the extent they are inconsistent with or contrary to 42 U.S.C. § 1981(a).

59. Chase denies the allegations of Paragraph 59.

60. Chase denies the allegations of Paragraph 60.

61. Chase denies the allegations of Paragraph 61, including each of the subparts referenced in 61(a)-61(h).

62. Chase denies the allegations of Paragraph 62.

63. Chase denies the allegations of Paragraph 63.

64. Chase denies the allegations of Paragraph 64.

WHEREFORE, having fully answered Count III, Chase requests that judgment be entered in Chase's favor and against Plaintiffs, that Chase be awarded its attorneys' fees and costs, and that the Court enter such other and further relief as it deems appropriate.

**COUNT IV
BREACH OF CONTRACT**

65. Chase repeats and realleges its answers to the allegations in Paragraphs 14 through 36 as if set forth fully herein.

66. Chase admits that each of Plaintiffs' accounts at issue is governed by a DAA.

67. Chase admits that Section IX(C) of the DAA sets forth, among other things, reasons why Chase may decline or prevent certain transactions to or from an account. Chase denies the allegations of Paragraph 67 to the extent they are inconsistent with or contrary to the applicable DAA.

68. Chase denies the allegations of Paragraph 68.

69. Chase denies the allegations of Paragraph 69.

70. Chase denies the allegations of Paragraph 70.

71. Chase denies the allegations of Paragraph 71.

72. Chase denies the allegations of Paragraph 72.

WHEREFORE, having fully answered Count IV, Chase requests that judgment be entered in Chase's favor and against Plaintiffs, that Chase be awarded its costs, and that the Court enter such other and further relief as it deems appropriate.

**COUNT V
INJUNCTIVE RELIEF**

73. Chase repeats and realleges its answers to the allegations in Paragraphs 14 through 36 as if set forth fully herein.

74. Chase denies the allegations of Paragraph 74.

75. Chase denies the allegations of Paragraph 75.

76. Chase denies the allegations of Paragraph 76.

77. Chase denies the allegations of Paragraph 77.

78. Chase denies the allegations of Paragraph 78.

79. Chase denies the allegations of Paragraph 79.

WHEREFORE, having fully answered Count V, Chase requests that judgment be entered in Chase's favor and against Plaintiffs, that Chase be awarded its attorneys' fees and costs, and that the Court enter such other and further relief as it deems appropriate.

**COUNT VI
DECLARATORY RELIEF**

80. Chase repeats and realleges its answers to the allegations in Paragraphs 14 through 36 as if set forth fully herein.

81. Chase admits that there is a disagreement between Plaintiffs and Chase regarding the funds in the accounts at issue based on the information available to Chase and the information Plaintiffs have provided and not provided to Chase.

82. Chase admits that 28 U.S.C. § 2201 sets forth relief afforded under the Declaratory Judgment Act. Chase is without sufficient knowledge or information to form a belief as to whether Plaintiffs are entitled to the funds at issue, and therefore, Chase denies those allegations, including each of the subparts in 82(c) and 82(d). Chase denies the remaining allegations of Paragraph 82.

WHEREFORE, having fully answered Count VI, Chase requests that judgment be entered in Chase's favor and against Plaintiffs, that Chase be awarded its costs, and that the Court enter such other and further relief as it deems appropriate.

AFFIRMATIVE DEFENSES

Chase gives notice that it may rely upon the following affirmative defenses. By listing any matter as an affirmative defense, Chase does not assume the burden of proof or any other burden if such burden would be on Plaintiffs under applicable law. Chase reserves the right to add to, delete from, and/or modify its affirmative defenses as discovery proceeds and its investigation continues.

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, because Plaintiffs fail to state claims upon which relief can be granted. Plaintiffs have failed to state a claim for violation of the EFAA (Count I) because, among other reasons, Plaintiffs have failed to allege that the EFAA applies, that the restriction referenced in the Complaint was not permissible, or that Chase engaged in any actions in violation of the EFAA, including based on the parties' contract under the DAA.

Plaintiffs have failed to state a claim for breach of contract (Count II) given that Plaintiffs have not identified any action by Chase in breach of the DAA and, in fact, the DAA expressly permitted Chase to place restrictions on Plaintiffs' accounts. Chase exercised its contractual right to place restrictions on the accounts based on available information relating to (i) Plaintiffs' businesses and their formation dates; (ii) Plaintiffs' eligibility for PPP loan proceeds; (iii)

responses provided by Plaintiffs that were not consistent with publicly available and other information, and (iv) responses and information Plaintiffs have not provided.

Plaintiffs have failed to state a claim for discrimination (Count III) because they do not plead any actionable conduct and intentional discrimination by Chase and because Chase was justified in taking the actions it did based on available information.

Plaintiffs have failed to state a claim for gross negligence (Count IV) because the economic loss rule bars the claim, as the parties' relationship was contractual and because Plaintiffs have not alleged any duty or breach of the DAA by Chase or that Chase was not justified in taking the actions it did based on the available information.

Plaintiffs' claim for injunctive relief (Count V) is improper because there is no such standalone cause of action and because the relief being requested is improper and Chase had legitimate business justifications for taking the actions it did based on the DAA and available information.

Plaintiffs' claim for declaratory relief (Count VI) is improper insofar as Plaintiffs are not entitled to the relief they seek given their own actions thus far and the information available to Chase and the information Plaintiffs have not provided. Plaintiffs' own conduct has caused the current situation, not any misconduct by Chase.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred because Chase's alleged conduct was permitted pursuant to the binding contractual agreements between Plaintiffs and Chase.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, because Chase was not the proximate cause of Plaintiffs' purported damages; Plaintiffs' purported damages, if any, were caused instead by their own actions and/or actions of a third party.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, because Plaintiffs are not entitled to the funds they are seeking based on the CARES Act and applicable regulations and the information that is available, including publicly available information.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, because Plaintiffs had full knowledge of and/or assumed the risk that caused, contributed, or resulted in their purported injury, if any is found to exist.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, because Plaintiffs failed to take all necessary, reasonable, and appropriate actions to mitigate their alleged injuries and damages, if any such injuries or damages are found to exist.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims must be dismissed based upon the failure to join indispensable parties, including but not limited to, Kabbage, Inc.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, because all decisions made with respect to Plaintiffs and their accounts were made by Chase for legitimate, non-discriminatory, non-pretextual reasons.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the doctrine of estoppel and/or because any recovery by Plaintiffs under such circumstances would be improper and unjust.

TENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims for punitive damages under Counts II and III are improper because there is no basis for them, and they are based on the actions of Chase which are justified. Specifically, Plaintiffs' claim for punitive damages under Count II, gross negligence, is improper because there is no legal claim for such relief as a matter of law. Plaintiffs' claim for punitive damages under Count III fails because they have not shown Chase's conduct was motivated by evil motive or intent, or involved reckless or callous indifference to Plaintiffs.

WHEREFORE, Chase having fully answered all of the allegations directed against it in the Complaint, respectfully requests that judgment be entered in favor of Chase and against Plaintiffs on the Complaint and the affirmative defenses.

CHASE'S COUNTERCLAIM AND THIRD-PARTY COMPLAINT IN INTERPLEADER, OR IN THE ALTERNATIVE, FOR DECLARATORY JUDGMENT

Counter-Plaintiff/Third-Party Plaintiff Chase, for its Counterclaim and Third-Party Complaint in Interpleader, or in the Alternative, for Declaratory Judgment against Counter-Defendants Latoya Clark ("Clark"), Luxx Lashes by Lay, LLC ("Luxx"), Tastetunup, LLC ("Tastetunup"), and Squeeze-It Corp. ("Squeeze-It"), and Third-Party Defendant Kabbage, Inc. ("Kabbage"), states as follows:

NATURE OF THE ACTION

1. Chase seeks relief from this Court so that the Court can determine whether Plaintiffs should be entitled to certain funds they received through the Paycheck Protection Program ("PPP"), which was added as part of the Coronavirus Aid, Relief, and Economic Security ("CARES") Act, and subsequently deposited into new accounts at Chase, or whether said funds

should be returned to the entity that originated the PPP loans, Kabbage,¹ or otherwise disbursed. Chase has attempted to address this matter with Plaintiffs, however, among other things, the information provided by Plaintiffs regarding their alleged entitlement to the funds at issue is not consistent with other information, including what they and their counsel have provided and what is publicly available. Plaintiffs have not provided the requested additional information despite being asked on several occasions to do so.

2. Because Chase is unable to determine whether Plaintiffs are the proper parties for purposes of the funds at issue and due to Plaintiffs' inability to provide basic entity information, including information to show that the entities existed and operated before the cutoff date established by Congress in order to be eligible for PPP funds, Chase seeks to turn over the funds in Plaintiffs' accounts to the Court so that the funds are handled properly. Chase has no interest in the funds and will disburse the funds according to the determination made by this Court.

PARTIES

3. Chase is a national banking association formed under the laws of the United States of America with its main office in Ohio and is, therefore, a citizen of Ohio.

4. According to the Complaint filed by Plaintiffs in this action, Clark is an individual who is a citizen of Florida and is otherwise *sui juris*. (Compl. ¶ 6.)

5. Luxx is a Florida limited liability company (*Id.* ¶ 9) with its principal place of business at 2020 NE 163rd Street, North Miami Beach, FL 33162. (Ex. A.) While the Complaint indicates that Clark was the Managing Member of Luxx "when formed" (*Id.* ¶ 9), according to the Florida Division of Corporations, Clark has no affiliation with Luxx. (Ex. A.)

¹ Under the PPP, authorized lenders originated and funded loans with the Small Business Administration (the "SBA") using public funds. The loans could be forgiven when warranted and are guaranteed by the SBA when the lender is not repaid.

6. Tastetunup is a Florida limited liability company (*Id.* ¶ 7), with its principal place of business at 1621 Ave M. Apt. A, Fort Pierce, FL, 34950. (Ex. B.) Clark is the Manager of Tastetunup. (*Id.*; Compl. ¶ 7.)

7. Squeeze-It is a Florida corporation (*Id.* ¶ 8) with its principal place of business located at 3610 Yacht Club Drive #213, Aventura, FL 33180. (Ex. C.) Clark is the President of Squeeze-It. (*Id.*; Compl. ¶ 8.)

8. Kabbage is a Delaware corporation with its principal place of business in Atlanta, Georgia. On information and belief, Kabbage is the lender from whom Plaintiffs received PPP funds. Kabbage is subject to this Court's personal jurisdiction because it engaged in regular and not isolated contacts with the State of Florida by doing business in this state, including, without limitation, by originating loans to citizens of Florida, including Plaintiffs.

JURISDICTION AND VENUE

9. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(a)(1) and § 1367 because it involves a dispute between citizens of different States and the amount at issue in the action exceeds \$75,000.00, exclusive of interest, costs, and attorneys' fees, and because Chase's claims form part of the same case or controversy as Plaintiffs' claims arising out of federal statutes.

10. The Court also has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1335, interpleader, because Chase has in its possession money or property of the value of \$500 or more, and two or more adverse claimants of diverse citizenship may claim to be entitled to such money or property.

11. The Court additionally has jurisdiction pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, because an actual controversy exists within the Court's jurisdiction such that

the Court may declare the rights and other legal relations between the interested parties to this action.

12. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(1) and (2) because Plaintiffs are residents of this judicial district and subject to this Court's personal jurisdiction, and because the cause of action set forth herein accrued in Miami-Dade County, Florida.

GENERAL ALLEGATIONS

A. The CARES Act

13. Congress created the PPP under the CARES Act and it was designed to provide businesses with financial relief so that they could cover costs related to payroll and other business expenses. There are a number of eligibility requirements in order for businesses to be eligible for and obtain a PPP loan. Compl. ¶ 18; 15 U.S.C. § 636(a)(36); 85 Fed. Reg. 20811, at 20812 ¶ 2.A (Apr. 15, 2020); *see also* 13 C.F.R. §120. Congress also expanded the Economic Injury Disaster Loan Program and added a number of eligibility requirements in order for businesses to be eligible for funds under the program. 15 U.S.C. § 9009.

14. The PPP eligibility requirements include, among other things, that the business must have been impacted by COVID-19 and operating as of February 15, 2020. 85 Fed. Reg. 20811, at 20812 ¶ 2.A.ii. In addition, PPP borrowers must certify that the funds will be used for approved purposes only. *Id.* at 20814 ¶ 2.R.

15. Among other things, the PPP also establishes the amount of money that can be obtained through the program. *Id.* at 20812 ¶ 2.D. The PPP considers, among other things, the prior average monthly payroll costs of the business, the wages paid to those employees, and various other criteria. *Id.* at 20812 ¶ 2.E.

16. The PPP led to more than \$500 billion being distributed to over five million companies across the United States from the start of the program in April 2020 through August 2020. *See Evidence of PPP Fraud Mounts, Officials Say*, Wall Street Journal, <https://www.wsj.com/articles/ppp-was-a-fraudster-free-for-all-investigators-say-11604832072> (last visited Dec. 16, 2020). While the PPP and other programs resulted in an unprecedented influx of funding being made available for eligible companies, the Small Business Administration's Inspector General and others have commented that fraud and abuse occurred in the PPP by businesses receiving funds that they should not have. *Id.* Recent reports from the SBA have commented on fraud arising from tens of thousands of companies that received PPP loans for which they appear ineligible, such as companies created after the pandemic began, or for other reasons. *Id.* Many companies also improperly received more funds than they should have based on employee headcounts and compensation rates, among other reasons. *Id.*

17. The PPP began accepting applications in April 2020.

B. Plaintiffs' Banking Relationship with Chase

18. None of the Plaintiff entities, including Luxx, Tastetunup, and Squeeze-It, had checking accounts at Chase before June 2020. Each of the Plaintiff entities opened their Chase accounts in June 2020.

19. Upon opening their accounts with Chase, Plaintiffs received a Chase Deposit Account Agreement ("DAA"), which established a contractual relationship between Plaintiffs and Chase. Compl. ¶¶ 23, 66. A copy of a DAA is attached to and incorporated into the Complaint as "Exhibit C."

20. The DAA's Section IV, titled Funds Availability Policy, and Section IX, titled Other Legal Terms, sets forth various exceptions and restrictions regarding the ability to access

funds deposited into Plaintiffs' accounts and, in particular, sets forth circumstances under which funds deposited into Plaintiffs' accounts may not be available to them.

21. For example, the DAA states that "longer delays may apply," "further review of the deposit after we receive it may still result in delayed availability," and "[w]e may decline or prevent any or all transactions to or from your account." Compl. Ex. C at 17, 21.

22. Moreover, the DAA expressly states:

There are many reasons we may decline or prevent transactions to or from your account, but we generally do it to protect you or us, or to comply with legal requirements.

We may decline or prevent any or all transactions to or from your account. We may refuse, freeze, reverse or delay any specific withdrawal, payment or transfer of funds to or from your account, or we may remove funds from your account to hold them pending investigation, including in one or more of the following circumstances:

- Your account is involved in any legal or administrative proceeding;
- We receive conflicting information or instructions regarding account ownership, control or activity;
- We suspect that you may be the victim of a fraud, scam or financial exploitation, even though you have authorized the transaction(s);
- We suspect that any transaction may involve illegal activity or may be fraudulent;
- We are complying in our sole judgment, with any federal, state or local law, rule or regulation, including federal asset control and sanction rules and anti-money laundering rules, or with our policies adopted to assure that we comply with those laws, rules or regulations; or
- We reasonably believe that doing so is necessary to avoid a loss or reduce risk to us.

We also may limit cash deposits to, or withdrawals from, your account (or all of your accounts collectively) in a single transaction or total withdrawals or deposits during any period of time, or who may make deposits, in order to reduce risk and/or enhance our efforts to comply with applicable law.

We will have no liability for any action we take under this section and we may take such action without advanced notice.

Id. Ex. C. at 21, ¶ C (emphasis added). Among other things, the DAA also indicates that for different reasons, Chase "may also place funds in a court (this is called an interpleader) for

resolution.” *Id.* Ex. C. at 22, ¶ H.

23. The DAA applicable to Plaintiffs’ Chase accounts, including all provisions therein, is the same as the deposit agreements that apply to other Chase customers’ accounts.

24. The provisions of the DAA, including the provisions permitting Chase to restrict Plaintiffs’ accounts without further notice, are entirely consistent with and permitted by federal law and banking regulations, including, without limitation, the Electronic Funds Availability Act.

C. The Funds at Issue

25. On or about July 1, 2020, PPP and SBA funds were deposited into the Chase accounts of the Plaintiff entities, as follows: (a) \$451,000.00 was deposited into the Chase account of Squeeze-It, ending in -8583; (b) \$418,803.00 was deposited into the Chase account of Luxx, ending in -6733; (c) \$132,400.00 was deposited into the Chase account of Tastetunup, ending in -8262; and (d) an additional \$10,000.00 was deposited into the Chase account of Tastetunup on July 9, 2020.²

26. None of the Plaintiff entities, including Luxx, Tastetunup, and Squeeze-It obtained PPP or SBA loans through Chase.

27. On information and belief, the PPP and SBA funds deposited into the Chase accounts referenced in Paragraph 25 resulted from PPP and SBA loans originated by Kabbage.

D. Chase Restricts Plaintiffs’ Accounts and Requests Information from Plaintiffs

28. Chase learned of information regarding Plaintiffs that led it to restrict Plaintiffs’ accounts pursuant to the DAA.

29. Among other things, public and other information indicates that Tastetunup was

² The account numbers set forth in Plaintiffs’ Complaint for Squeeze-It and Tasteunup, as well as the loan amount for Luxx, are incorrect. (Compl. ¶¶ 23, 25.)

not an active company as of February 15, 2020, and that it was not reinstated as an active company until April 21, 2020. (Ex. B.)

30. Public and other information indicates that Squeeze-It was incorporated on April 27, 2020. (Ex. C.)

31. Public and other information indicates that Luxx was incorporated on May 12, 2020. (Ex. A.)

32. Among other things, each of these dates of incorporation or of active business activity post-date the February 15, 2020 cut-off date set by Congress and the SBA to determine eligibility for PPP loans. 85 Fed. Reg. 20811, at 20812 ¶ 2.A.ii.

33. Chase reached out to plaintiffs for additional information and also on or about July 14, 2020, Chase restricted Luxx's account ending in -6733 (the "Luxx Account"), Tastetunup's account ending in -8262 (the "Tastetunup Account"), and Squeeze-It's account ending in -8583 (the "Squeeze-It Account"). At the same time, based on the information available at that time, Chase restricted the related accounts associated with these three accounts (together with the Luxx Account, Tastetunup Account, and Squeeze-It Account, the "Clark Business Accounts"), which included the one and only account held by Clark personally, which was also opened in June 2020 (the "Clark Personal Account").³

34. Upon restricting the accounts, Chase requested of Plaintiffs certain information and Chase indicated that it would lift the account holds on receipt of the information. The requested information included information showing when the Plaintiff entities were formed.

35. Plaintiffs have not provided the information requested by Chase, including

³ Prior to opening the Clark Personal Account, Clark had not personally held any accounts at Chase since 2013.

information to show that the businesses were in operation before February 15, 2020, and that the PPP funds within the Chase accounts were properly held by Plaintiffs. Moreover, the information provided by Plaintiffs and their counsel, including in September 2020, raised more questions since that information contained multiple inconsistencies, including discrepancies between the information provided and information publicly available through, among other things, the Florida Department of State Division of Corporations.

36. For example, Plaintiffs attach as Exhibit D to the Complaint some letters sent by Plaintiffs' counsel to Chase, including a letter dated September 28, 2020 that contains "dates of establishment" and Employer Identification Numbers ("EINs") for Squeeze-It, Luxx, and Tastetunup, purporting to provide dates of establishment for each Plaintiff entity. However, the dates provided in this letter do not align with the dates provided by the Florida Division of Corporations.

37. Moreover, the EIN Plaintiffs' counsel provided for Luxx is nowhere to be found on Luxx's listing with the Florida Division of Corporations (*see* Ex. A) and a search of the number on the Division's website reveals that the EIN is not tied to any Florida entity.

38. Plaintiffs have provided no explanation for the multiple discrepancies between information they have provided to Chase and information readily available in the public record.

E. Chase Seeks Court Guidance Regarding Ownership and Disposition of the Funds

39. Based on the foregoing and Plaintiffs' inability to provide information requested of them, the proper ownership and disposition of the funds in the Clark Business Accounts and Clark Personal Account (the "Funds") is not evident to Chase.

40. Kabbage, as the originator of the PPP and SBA loans that were deposited into the Clark Business Accounts and/or transferred into the Clark Personal Account, may also claim entitlement to some or all of the Funds.

41. Chase brings this action as a disinterested party.

42. All conditions precedent to bringing this action, if any, have occurred, have been performed, or have been excused or waived.

COUNT I
Interpleader

43. Chase repeats and reincorporates the allegations contained in paragraphs 1 through 42 above as if fully set forth herein.

44. Chase is in possession of the Funds, which may rightfully be controlled by Clark, Luxx, Tastetunup, Squeeze-It, Kabbage, or a combination of these parties.

45. Plaintiffs have made a demand on Chase for payment of the Funds.

46. Under the circumstances, complying with the demand may create potential exposure for Chase to Kabbage. Kabbage may claim that based on available information, Plaintiffs are not entitled to some or all of the Funds. Chase claims no interest in the funds and turns to the Court to adjudicate the open questions around which party is lawfully entitled to them.

47. Chase is unable to ascertain the appropriate party entitled to the Funds and, therefore, requests to tender the Funds in the Clark Business Accounts and Clark Personal Account to the Clerk of the United States District Court for the Southern District of Florida (the "Clerk").

48. Chase claims no title to, or interest in, the Funds in the Clark Business Accounts or the Clark Personal Account and is willing to distribute the Funds therein according to the instructions of the party entitled to give such instructions. However, Chase is unable to make that determination under the current circumstances without exposing itself to potential liability.

49. Chase is ready, willing, and hereby offers to tender the Funds in the Clark Business Accounts and Clark Personal Account to the Clerk or to a person duly authorized by the Court to receive them.

50. There is not now, nor has there ever been, any collusion between Chase and any of Plaintiffs or Kabbage. Chase has brought this action solely to secure the proper and appropriate guidance regarding the disposition of the Funds in the Clark Business Accounts and Clark Personal Account.

51. Without this action, Chase does not have an adequate way of protecting itself against multiple and inconsistent claims regarding the Funds in the Clark Business Accounts and Clark Personal Account and their distribution.

52. Chase further prays that, upon deposit of the Funds in the Clark Business Accounts and Clark Personal Account with the Clerk, it be dismissed with prejudice from Plaintiffs' suit against it.

WHEREFORE, Chase respectfully requests a final judgment in its favor and against Plaintiffs and Kabbage (i) granting Chase the right to deposit the corpus of Funds in the Clark Business Accounts and Clark Personal Account with the Clerk so that the Court may determine the appropriate party entitled to said Funds; (ii) dismissing Chase with prejudice from the Complaint filed against it by Plaintiffs upon deposit of said Funds with the Clerk; (iii) awarding Chase its attorneys' fees and costs incurred in interpleading said Funds; and (iv) granting such other and further relief as the Court deems appropriate.

COUNT II
Declaratory Judgment – in the Alternative to Count I

53. Chase repeats and reincorporates the allegations contained in paragraphs 1 through 42 above as if fully set forth herein.

54. There exists an actual controversy between the parties that lies within the jurisdiction of the Court pursuant to 28 U.S.C. § 2201.

55. Chase is in possession of Funds that may rightfully be controlled by Clark, Luxx, Tastetunup, Squeeze-It, Kabbage, or a combination of these parties.

56. Plaintiffs have made a demand on Chase for payment of the Funds.

57. Under the circumstances, Kabbage may claim that Plaintiffs are not entitled to some or all of the Funds.

58. Chase is unable to ascertain the appropriate party entitled to the Funds.

59. An actual and ripe controversy exists of sufficient immediacy to warrant declaratory relief.

60. Without this action, Chase has no adequate way of protecting itself against multiple and inconsistent claims regarding the Funds in the Clark Business Accounts and Clark Personal Account and their distribution.

61. For these reasons, Chase seeks a declaration instructing Chase what to do with the Funds, the Clark Business Accounts, and the Clark Personal Account.

WHEREFORE, Chase respectfully requests a final judgment in its favor and against Plaintiffs and Kabbage declaring that (i) Chase was entitled to restrict access to the Clark Business Accounts and Clark Personal Account; (ii) instructing Chase as to the disposition of the Funds, the Clark Business Accounts, and the Clark Personal Account; (iii) declaring that Chase be discharged from any further participation in this proceeding and that the Court order and adjudge that Chase has no further liability of any kind to any of Plaintiffs or Kabbage for the payment of any sum; and (iv) granting such other and further relief as the Court deems appropriate.

Dated: December 23, 2020

Respectfully submitted,

GREENBERG TRAURIG, P.A.
333 S.E. 2nd Avenue, Suite 4400
Miami, Florida 33131
Telephone: (305) 579-0500
Facsimile: (305) 579-0717

By: /s/ Eva M. Spahn

EVA M. SPAHN

Florida Bar No. 92063

Email: spahne@gtlaw.com
cruz@gtlaw.com

ELISA H. BACA

Florida Bar No. 1003009

Email: bacae@gtlaw.com
orizondol@gtlaw.com

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served on counsel of record through the Court's CM/ECF system on December 23, 2020.

/s/ Eva M. Spahn

Eva M. Spahn

EXHIBIT A



[Department of State](#) / [Division of Corporations](#) / [Search Records](#) / [Search by Entity Name](#) /

Detail by Entity Name

Florida Limited Liability Company
LUXX LASHES BY LAY LLC

Filing Information

Document Number	L20000128190
FEI/EIN Number	NONE
Date Filed	05/12/2020
Effective Date	05/12/2020
State	FL
Status	ACTIVE
Last Event	LC AMENDMENT
Event Date Filed	07/30/2020
Event Effective Date	NONE

Principal Address

2020 NE 163RD STREET #106
NORTH MIAMI BEACH, FL 33162

Changed: 07/30/2020

Mailing Address

2020 NE 163RD STREET #106
NORTH MIAMI BEACH, FL 33162

Changed: 07/30/2020

Registered Agent Name & Address

ESCOE, ELAINE
6344 WILLOUGHBY CIRCLE
LAKE WORTH, FL 33463

Name Changed: 07/30/2020

Authorized Person(s) Detail

Name & Address

Title MGR

ESCOE, ELAINE
6344 WILLOUGHBY CIRCLE
LAKE WORTH, FL 33463

Annual Reports

No Annual Reports Filed

Document Images

[07/30/2020 -- LC Amendment](#)

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[06/09/2020 -- LC Amendment](#)

[View image in PDF format](#)

[05/12/2020 -- Florida Limited Liability](#)

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Florida Department of State, Division of Corporations

EXHIBIT B



[Department of State](#) / [Division of Corporations](#) / [Search Records](#) / [Search by Entity Name](#) /

Detail by Entity Name

Florida Limited Liability Company
TASTETUNUP LLC

Filing Information

Document Number	L17000106382
FEI/EIN Number	82-1546161
Date Filed	05/12/2017
Effective Date	05/07/2017
State	FL
Status	ACTIVE
Last Event	REINSTATEMENT
Event Date Filed	04/21/2020

Principal Address

1621 AVE M APT A
A
FORT PIERCE, AL 34950

Changed: 04/21/2020

Mailing Address

1621 AVE M APT A
A
FORT PIERCE, FL 34950

Registered Agent Name & Address

CLARK, LATOYA T
1621 AVE M APT A
FORT PIERCE, FL 34950

Name Changed: 04/21/2020

Authorized Person(s) Detail

Name & Address

Title MGR

CLARK, LATOYA T
1621 AVE M APT A
FORT PIERCE, FL 34950 UN

Annual Reports

Report Year	Filed Date
2018	04/21/2020
2019	04/21/2020
2020	04/21/2020

Document Images

04/21/2020 -- REINSTATEMENT	View image in PDF format
05/12/2017 -- Florida Limited Liability	View image in PDF format

Florida Department of State, Division of Corporations

EXHIBIT C



[Department of State](#) / [Division of Corporations](#) / [Search Records](#) / [Search by Entity Name](#) /

Detail by Entity Name

Florida Profit Corporation
SQUEEZE IT CORP

Filing Information

Document Number	P20000032051
FEI/EIN Number	85-0872956
Date Filed	04/27/2020
Effective Date	04/21/2020
State	FL
Status	ACTIVE

Principal Address

3610 YACHT CLUB DR
213
AVENTURA, FL 33180

Mailing Address

P.O BOX 5386
HOLLYWOOD, FL 33083

Registered Agent Name & Address

CLARK, LATOYA
3610 YACHT CLUB DR
213
AVENTURA, FL 33180

Officer/Director Detail

Name & Address

Title P

CLARK, LATOYA
3610 YACHT CLUB DR
AVENTURA, FL 33180

Title VP

VALENTINE, DAVID, JR
3610 YACHT CLUB DR
AVENTURA, FL 33180

Title VP

VALENTINE, JOSEPH
3610 YACHT CLUB DR
AVENTURA, FL 33180

Title VP

VALENTINE, LATOYA
3610 YACHT CLUB DR
AVENTURA, FL 33180

Title VP

BECKETT, JEREMIAH
3610 YACHT CLUB DR
AVENTURA, FL 33180

Title VP

GREEN, SHENNOCHA
3610 YACHT CLUB DR
AVENTURA, FL 33180

Annual Reports

No Annual Reports Filed

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