

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK, COUNTY OF NEW YORK**

**CANDICE LUE, an individual,**

**Plaintiff,**

**V.**

**JPMORGAN CHASE & CO., a Delaware Corporation; ALEX KHAVIN, an individual; FIDELIA SHILLINGFORD, an individual; KIMBERLY DAUBER, an individual; BARUCH HOROWITZ, an individual; CHRIS LIASIS, an individual; and MICHELLE SULLIVAN, an individual; inclusive,**

**Defendants.**

**CIVIL ACTION NO.: 19 CV 9784  
(KPF) (SDA)**

**RESPONSE TO:**

**DEFENDANTS' ATTORNEY ANSHEL KAPLAN'S LETTER MOTION -  
(DOCKET # 8)**

**I. ARGUMENT**

Contrary to Mr. Kaplan's statement as it regards service of the Summons and Complaint, I, Plaintiff, Candice Lue, am not in violation of Fed. R. Civ. P. 4(c)(2) because as Form AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2) attached shows, I did not effect service myself.

I served the said Summons and Complaint on Messrs. Robert Whitman and Anshel Kaplan out of respect for a request made by JPMorgan Chase's Assistant General Counsel, Penny Domow in March 2016 (see attached) not to serve JPMorgan Chase's current and/or former employees directly as it related to my Employment Racial Discrimination and Retaliation lawsuit (1:16-CV-03207) but to serve her with all court papers for all the said Defendants. Later, I got a letter dated July 14, 2016 (see attached) from Robert Whitman telling me that as JPMorgan Chase & Co., et al's attorney, I am not to send anymore correspondence to Penny Domow at JPMorgan Chase or to any of their current and/or former employees but to send all correspondence to him/Anshel Kaplan alone at Seyfarth, thus the reason for me serving the Summons and Complaint upon Seyfarth.

Also, my Server, [REDACTED] told [REDACTED], who identified himself via his Seyfarth Employee ID Badge as the “Managing Clerk” and who demanded that she tell him what she was serving because “all those things go through him”, that she was serving “*new stuff*” as he condescendingly and repeatedly told her in front of the two 620 Eighth Avenue security guards sitting at the desk that “*you lost, your appeal was denied*” in display of his knowledge of my lawsuit against JPMorgan Chase & Co., et al. He then confirmed by repeating to/asking her “*new stuff*” and she told him “yes” and he accepted the envelope.

With that said, if Seyfarth who I had been dealing with for more than three (3) years as JPMorgan Chase & Co., et al’s attorney was not authorized to accept from me service of their Summons and Complaint, etc., then their “Managing Clerk” should not have accepted it. Also, instead of contacting the said Defendants, Mr. Kaplan who is in possession of my home address, my email address and my Advisor’s telephone number should not have opened the envelope marked “CONFIDENTIAL” with my return address on it and addressed to “JPMorgan Chase & Co., et al, C/O Messrs. Robert Whitman & Anshel Kaplan” but instead contacted me immediately to let me know that his office is not authorized to accept such service on JPMorgan Chase & Co., et al’s behalf. In conjunction, I was in the Pro Se office on October 30, 2019 and could have had the Summons amended at that time and Mr. Kaplan’s gripe could have been avoided.

As it relates to Mr. Kaplan’s “absolute privilege” defense, the victim of perjury normally does not have a cause of action against the person who committed the perjury but perjury can provide a predicate for other tort claims if the elements of those torts can otherwise be proven. *Morgan v. Graham*, 228 F.2d 625, 627, 628 (10th Cir. 1956).

With that said, the above-referenced action is to recover damages because of the **false and fraudulent acts and conduct of JPMorgan Chase & Co., et al** as detailed in my “First Cause of Action” for which I have solid proofs and which has caused me severe harm and loss through the defamation of my character which is being compounded each and every day. Also, “absolute

privilege” cannot be extended to JPMorgan Chase & Co., et al because the Courts neglected their duty to uphold the rule of law by consistently ignoring my reports and evidence of the CRIME of Perjury and the false and fraudulent acts and conduct committed by the said Defendants via several Motions I filed with the District Court and cited 18 USC §§ 4, 1505 and 1621, a Writ of Mandamus (17 – 2751) I filed with the Appeals Court and documents I resubmitted to the Appeals Court which were most relevant to my Appeal pursuant to Rule 10(B)(2) of the Federal Rules of Appellate Procedure which had all the evidence to show that the Defendants/Declarants committed the crimes of perjury and obstruction of justice. In conjunction, in the less than two pages of my 4 and less than a ¼ page (double-spaced) pre-prepared statement that I was only allowed to read at the April 18, 2019 Second Circuit Court of Appeals oral argument, I described the Defendants’ Motion for Summary Judgment as being “CRIMINAL and PERJURIOUS” **five (5)** times, cited 18 USC §§ 4, 1505 and 1621, stated the Defendants LIED under Penalty of Perjury and even so, the Court ignored the Defendants’ **false and fraudulent acts and conduct**.

## II. CONCLUSION

In light of the foregoing, this action to recover damages because of the false and fraudulent acts and conduct of JPMorgan Chase & Co., et al for which I have solid proofs and the Courts’ blatant neglect of duty<sup>1</sup> which has caused me severe harm and loss through the defamation of my character, should not be dismissed as a matter of law.

DATED: November 18, 2019

Respectfully Submitted,

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CANDICE LUE  
Pro Se Plaintiff

[REDACTED]

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<sup>1</sup> Neglect of duty is the omission to perform a duty. Neglect of duty has reference to the neglect or failure on the part of a public officer to do and perform some duty or duties laid on him as such by virtue of his office or which is required of him by law. *Hardie v. Coleman*, 115 Fla. 119 (Fla. 1934) - (Credit to USLEGAL.COM)

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

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for (name of individual and title, if any) JPMORGAN CHASE & CO., ET AL  
was received by me on (date) 10/24/2019.

☐ I personally served the summons on the individual at (place) \_\_\_\_\_  
\_\_\_\_\_ on (date) \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with (name) \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on (date) \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☒ I served the summons on (name of individual) [REDACTED] - MANAGING CLERK  
SEYFARTH SHAW LLP (Attorneys for Defendants), who is  
designated by law to accept service of process on behalf of (name of organization) \_\_\_\_\_  
JPMORGAN CHASE & CO., ET AL on (date) 10/24/2019; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other (specify): \_\_\_\_\_

My fees are \$ 0.00 for travel and \$ 0.00 for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: 10/24/2019

\_\_\_\_\_  
Server's signature  
\_\_\_\_\_  
Printed name and title  
\_\_\_\_\_  
\_\_\_\_\_  
Server's address

Additional information regarding attempted service, etc:



Writer's direct phone  
(212) 218-5629

Writer's e-mail  
rwhitman@seyfarth.com

Seyfarth Shaw LLP  
620 Eighth Avenue  
New York, New York 10018  
(212) 218-5500  
fax (212) 218-5526  
www.seyfarth.com

July 14, 2016

**VIA FEDERAL EXPRESS**

Candace Lue  
[REDACTED]  
[REDACTED]

Re: Lue v. JPMorgan Chase & Co., et al.,  
No. 16 CV 3207 (AJN) (GWG)

Dear Ms. Lue:

We are in receipt of your letter, dated July 8, 2016, requesting an "official reason with proof" for your termination. Please be advised that we will address any pre-trial discovery issues with the Court at the initial conference scheduled for July 19 at 3:00 PM. A copy of the Order for Conference Pursuant to Rule 16 is enclosed.

\* Further, it is not necessary for you to send copies of correspondence or other documents directly to any of the Defendants, including Penny Domow or others at Chase. All documents should be directed to us alone. \*

Finally, in order to facilitate communication with you during the course of this matter, please provide us with your email address and telephone number.

Very truly yours,

SEYFARTH SHAW LLP

/s/ Robert S. Whitman

Robert S. Whitman

**From:** Domow, Penny P <Penny.P.Domow@jpmorgan.com>  
**To:** 'CandiceLue[REDACTED]' <CandiceLue[REDACTED]>  
**Subject:** Prospective litigation  
**Date:** Wed, Mar 23, 2016 2:27 pm

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Please refer service of any complaint regarding your employment with JPMorgan Chase & Co. to me at the below address. This includes service on any JPMorgan employee named by you in such litigation. At this point, kindly communicate with me directly regarding any such litigation and/or any such individual employee.

Thank you.

**Penny P. Domow** | Assistant General Counsel | JPMorgan Chase & Co. | 4 New York Plaza, 19th Floor, New York, NY 10004 |

Tel: 212-623-1371 | [penny.p.domow@jpmorgan.com](mailto:penny.p.domow@jpmorgan.com)

This email is confidential and subject to important disclaimers and conditions including on offers for the purchase or sale of securities, accuracy and completeness of information, viruses, confidentiality, legal privilege, and legal entity disclaimers, available at <http://www.jpmorgan.com/pages/disclosures/email>



**From:** Domow, Penny P <Penny.P.Domow@jpmorgan.com>  
**To:** 'CandiceLue[REDACTED]' <CandiceLue[REDACTED]>  
**Subject:** RE: Candice Lue - Former Employee  
**Date:** Wed, Mar 23, 2016 3:30 pm

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As previously indicated, I will accept service of complaints for the firm and any employee currently and formerly employed with the firm.

**Penny P. Domow** | Assistant General Counsel | JPMorgan Chase & Co. | 4 New York Plaza, 19th Floor, New York, NY 10004 |

Tel: 212-623-1371 | [penny.p.domow@jpmorgan.com](mailto:penny.p.domow@jpmorgan.com)

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**From:** CandiceLue[REDACTED] [mailto:CandiceLue[REDACTED]]  
**Sent:** Wednesday, March 23, 2016 3:27 PM  
**To:** Domow, Penny P  
**Subject:** Candice Lue - Former Employee

RE: EEOC Charge No. 520-2015-03588

In response to your email attached, please be advised that the following JPMorgan Chase & Co. employees will be named as **individual** Defendants in a Title VII of the Civil Rights Act of 1964 lawsuit that will be filed in the United States District Court Southern District of New York:

Fidelia Shillingford

Philippe Quix

Thomas Poz

Helen Dubowy

Chris Liasis

Michelle Sullivan

**If JPMorgan Chase & Co. will be providing legal representation to represent the aforesaid employees in court**, please provide such attorney's contact information to ensure proper service of legal documents under Rule 5(b) of the Federal Rules of Civil Procedure.

Also, as a FYI, employees/former employees, Alex Khavin and John Vega will be named as individual Defendants in this said lawsuit.

Since this is a time sensitive matter, your immediate attention is required.

Respectfully,

Candice Lue

This email is confidential and subject to important disclaimers and conditions including on offers for the purchase or sale of securities, accuracy and completeness of information, viruses, confidentiality, legal privilege, and legal entity disclaimers, available at <http://www.jpmorgan.com/pages/disclosures/email>





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November 14, 2019

**VIA ECF**

Honorable Katherine Polk Failla  
United States District Court  
Southern District of New York  
40 Foley Square  
New York, NY 10007

Re: Lue v. JPMorgan Chase & Co., et al., No. 19-cv-9784 (S.D.N.Y.)

Dear Judge Failla:

On behalf of the Defendants in the above-referenced action, and in accordance with Your Honor's Individual Rule 4(A), we write to respectfully request a pre-motion conference in anticipation of Defendants' Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6). Because the Complaint asserts defamation and related claims based on alleged statements made during a previous lawsuit, the claims are subject to an absolute privilege and should be dismissed.<sup>1</sup>

**I. BACKGROUND**

In 2016, Plaintiff sued Chase, her former employer, and several current and former Chase employees for discrimination and retaliation arising out of her termination. *Lue v. JPMorgan Chase & Co., et al.*, No. 16-CV-3207 (AJN) (GWG) ("*Lue I*"). On March 27, 2018, Judge Alison J. Nathan granted the defendants' motion for summary judgment and dismissed Plaintiff's claims

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<sup>1</sup> At this time, none of the Defendants have been properly served. Although Plaintiff purported to serve all Defendants on October 24, 2019 by hand delivering a copy of the Summons and Complaint to the undersigned (Affirmation of Service (Dkt. No. 5) (asserting that Plaintiff personally served "all ... parties in this case" by hand delivering papers to Seyfarth Shaw LLP), this is not valid service for two reasons: Plaintiff may not effect service by herself because she is a party, *see* Fed. R. Civ. P. 4(c)(2), and at the time of that delivery, this Firm had not been authorized to accept service for JPMorgan Chase & Co. ("Chase") or any of the other Defendants, *see Bisesto v. Uher*, No. 19-CV-1678 (KMK), 2019 WL 2537452, at \*2 n.1 (S.D.N.Y. June 20, 2019) ("[W]here an attorney is not authorized to accept service on behalf of a defendant, service upon that attorney does not constitute properly effectuated service of process."). Nonetheless, in the interest of proceeding to a prompt resolution of the issues raised by our anticipated motion, we have now been authorized by all Defendants other than Kimberly Dauber to represent that they are not contesting service. As to Ms. Dauber, she is a former Chase employee and we have not yet been able to contact her, so we cannot waive service for her at this time.



in their entirety with prejudice. The Second Circuit affirmed, and the Supreme Court denied *certiorari*. See *Lue I*, 2018 WL 1583295 (S.D.N.Y. Mar. 27, 2018), *aff'd*, 768 F. App'x 7 (2d Cir. 2019), *cert. denied*, No. 19-260, 2019 WL 5150527 (U.S. Oct. 15, 2019).

Eight days after the Supreme Court's denial of her petition for *certiorari*, Plaintiff commenced this action. She alleges that, in filings with the court during *Lue I*, the Defendants "defamed [her] character ... [and] knowingly made false, misleading, libelous, perjurious and disparaging statements against and about [her] that maliciously and mendaciously made [her] out to be a vindictive, lying, troublesome, uncongenial and elitist person and a less desirable/undesirable employee." Am. Compl. ¶¶ 17, 20.

## II. GROUNDS FOR THE MOTION

All of Plaintiff's claims sound in defamation, either explicitly<sup>2</sup> or implicitly.<sup>3</sup> As such, they are barred by the absolute privilege for statements made in the course of judicial proceedings.

"A statement made in the course of a judicial proceeding 'is absolutely privileged if, by any view or under any circumstances, it may be considered pertinent to the litigation.'" *Fabrizio v. Spencer*, 248 A.D.2d 351, 351 (2d Dept. 1998) (quoting *Martirano v. Frost*, 25 N.Y.2d 505, 507 (1969)). "[A]ny matter which, by any possibility, under any circumstances, at any stage of the proceeding, may be or may become material or pertinent is protected by an absolute privilege . . . irrespective of the motive of the speaker or writer," even if the individual spoke or wrote with actual malice. *Kelly v. Albarino*, 485 F.3d 664, 666 (2d Cir. 2007) (internal citations omitted). The privilege is interpreted "extremely broad[ly]" and "embraces anything that may possibly or plausibly be relevant or pertinent, with the barest rationality, divorced from any palpable or pragmatic degree of probability." *Lipin v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, 202 F. Supp. 2d 126, 137 (S.D.N.Y. 2002) (internal quotations omitted). Any doubts with respect to the question of pertinence "are to be resolved in favor of pertinence." *Gristede's Foods, Inc. v. Poospatuck (Unkechaug) Nation*, 2009 WL 4547792, at \*9 (E.D.N.Y. Dec. 1, 2009). Defamation claims founded upon statements made in the course of judicial proceedings are subject to dismissal at the pleading stage based on this absolute privilege. See, e.g., *Santaniello v. T-Mobile*, No. 12-CV-5273 (PGG), slip op. at 3-6 (S.D.N.Y. Mar. 27, 2018) (dismissing defamation claims based on absolute privilege because the alleged statements were made during the course of the judicial proceeding and were "unquestionably pertinent").

Here, as expressly stated in the Amended Complaint (see, e.g., ¶¶ 17, 19, 20, 22-28), all of the allegedly defamatory statements about which Plaintiff complains were made in the context

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<sup>2</sup> See Am. Compl. Causes of Action 1 (Defamation), 5 (Libel), 6 (Defamation Per Se), and 7 (Defamation by Implication).

<sup>3</sup> See, e.g., Am. Compl. Causes of Action 2 (Common Law Conspiracy) (Defendants "acted in concert with each other to commit false and fraudulent acts and conduct by knowingly, purposefully and intentionally making false, misleading, libelous, perjurious, malicious, mendacious and disparaging statements against and about me" during *Lue I*) and 4 (Actual Malice) (Defendants "acted with actual malice because they knowingly published false, misleading, libelous, malicious, mendacious, perjurious and disparaging statements against and about me" in *Lue I*).

of and were pertinent to *Lue I*. Accordingly, the statements are subject to an absolute privilege, and Plaintiff's claims must be dismissed as a matter of law.

### **III. CONCLUSION**

For the foregoing reasons, Defendants respectfully request leave to make a Motion to Dismiss. We thank the Court for its consideration of this request.

Respectfully submitted,

SEYFARTH SHAW LLP

*/s/ Anshel Joel Kaplan*

Robert S. Whitman  
Anshel Joel Kaplan

cc: Candice Lue (via First Class Mail)

[REDACTED]