

3. Defendant ChexSystems violated the FCRA and the rules and regulations thereunder, the New York Fair Credit Reporting Act (New York General Business Law §§ 380 *et seq.*) (NY FCRA), and state common law, by failing to properly reinvestigate Plaintiff's dispute of inaccurate, derogatory information on her ChexSystems report and by misreporting and failing to delete inaccurate information on Plaintiff's ChexSystems report, thus damaging Plaintiff's ability to open a bank account.

4. Plaintiff seeks damages, along with injunctive relief, reasonable costs, and attorney's fees.

JURISDICTION AND VENUE

5. This Court has jurisdiction over Plaintiff's claim pursuant to 15 U.S.C. § 1693m(g) and 28 U.S.C. § 1331. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

6. Venue in this district is proper under 28 U.S.C. § 1391(b)(1) and (c)(2) because Defendant BOFA does business in this district and because Defendant ChexSystems does business in this district. Venue in this district is also proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to Plaintiff's claims occurred in this district.

PARTIES

7. Plaintiff Adiaha A. Ruane is a 45-year-old African-American woman currently living in Brooklyn, New York and supporting her two children ages eight and fifteen.

8. Plaintiff is a "consumer" as defined by the Electronic Fund Transfer Act, 15 U.S.C. § 1693a(6), because she is a natural person who had an account held by a financial

institution, and who was issued an access device by that financial institution and entered into an agreement with that financial institution for the provision of electronic fund transfer services.

9. Defendant Bank of America, N.A. (“Defendant” or “BOFA”) is a national banking association whose principal place of business is located at 100 North Tryon Street, Charlotte, North Carolina 28202. As of June 30, 2016, Defendant had \$2.2 trillion in assets; ranked fifth among banks in deposit market share in New York City; and had 124 branches throughout New York City.

10. Defendant is a “financial institution” as defined by the Electronic Fund Transfer Act, 15 U.S.C. § 1693a(9), because it is a national bank and directly or indirectly holds accounts belonging to consumers or issues an access device and agrees with consumers to provide electronic fund transfer services.

11. Defendant ChexSystems is a Minnesota corporation authorized to do business in New York State.

12. Defendant ChexSystems is a “consumer reporting agency” as defined by both the FCRA, 15 U.S.C. § 1681a(f), and the NY FCRA, N.Y. Gen. Bus. Law § 380-a(e), because it regularly engages in the practice of assembling, evaluating, and distributing information concerning consumers for the purpose of furnishing consumer reports, as defined by the FCRA, 15 U.S.C. § 1681a(d), and the NY FCRA, N.Y. Gen. Bus. Law § 380-a(c), to third parties.

13. Upon information and belief, ChexSystems disburses such consumer reports to third parties for monetary compensation.

FACTUAL ALLEGATIONS

Plaintiff's Facts

I. Fraud on Plaintiff's BOFA Account

14. Plaintiff Adiaha A. Ruane is a 45-year-old African-American woman currently living in Brooklyn, New York and supporting her two children ages eight and fifteen.

15. Ms. Ruane moved to Brooklyn on or about December 7, 2016 due to the fact that BOFA improperly held her responsible for fraud committed on her checking account, closed her account, and reported her to at least one consumer reporting agency, which prevented her from opening an account at another bank.

16. Ms. Ruane lived in San Francisco, California for approximately three months before being forced to relocate to Brooklyn. She moved to San Francisco in early-September 2016 and prior to that lived in Athens, Georgia for approximately five years.

17. Upon information and belief, Ms. Ruane opened a BOFA checking account and savings account in or around 2004 and closed the savings account in or around 2011.

18. From the time she opened these BOFA accounts until September 27, 2016, Ms. Ruane was not aware of any issues or problems with her accounts including unauthorized or fraudulent transactions.

19. On September 27, 2016, an unknown fraudster (or fraudsters) deposited five fraudulent checks in the amounts of \$989.00, \$975.00, \$958.00, \$969.00, and \$947.97 into Ms. Ruane's BOFA checking account totaling \$4,838.97 by making mobile deposits in New York.

20. On or about that same day, Ms. Ruane logged into her BOFA account online early in the morning and saw that it contained nearly \$5,000 more than it should. Assuming this was a

mistake Ms. Ruane called BOFA as soon as possible once she got to work and informed BOFA that her account contained unauthorized funds that she did not recognize.

21. Ms. Ruane spoke on the phone to a BOFA employee who asked her whether she made or recognized the September 27, 2016 deposits. Ms. Ruane said that she did not make or recognize the deposits, did not know where the money came from, and was calling to request that BOFA remove the unauthorized funds from her account. The employee said that the bank would rectify the situation.

22. However, a few hours later, a different BOFA employee called Ms. Ruane and again asked her whether she deposited the September 27, 2016 checks. Ms. Ruane again said she did not deposit the checks. The employee said BOFA believed that she did and that BOFA was closing her account, holding her responsible for the fraud, and reporting her to ChexSystems.

23. Ms. Ruane asked the employee why BOFA was blaming her for the fraud. He said he could not discuss it with her, but that the bank would send her information by mail.

24. Ms. Ruane also asked why the bank was closing her account after she had been a loyal customer for many years and how she could retrieve any remaining money in the account. The employee said BOFA would release any remaining money to her by the end of the week.

25. The employee said she would never again be able to open an account with BOFA.

26. That same day after returning home from work, Ms. Ruane logged into her BOFA account online and saw log-ins from a phone that she did not recognize. She again called BOFA and shared this information, yet the bank still refused to help her.

27. Ms. Ruane continued to call BOFA at least once a day over the course of the next week requesting that the bank release any money that was still in the account, maintaining that she was not responsible for the fraud, and pleading with the bank not to close her account since

without access to a bank account, Ms. Ruane was unable to cover rent, care for her family, and pay for her transportation to and from work.

II. BOFA's Response to the Fraud

28. Ms. Ruane received three separate letters from BOFA dated September 29, 2016.

29. One letter consisted of five nearly identical letters each referencing one of the five fraudulently deposited checks and stating that "We found it necessary to place a freeze on one or more of the items you recently deposited."

30. Another letter stated that the five checks deposited into Ms. Ruane's account were returned unpaid and that "As a result, we've deducted them from your account. You will see the adjustment on your account statement." This letter included copies of the five fraudulent checks and showed a "return items fee" of \$60.00.

31. The third letter said "After careful review, we've made the decision to close your account." The letter also said BOFA "may report the account to the following reporting agencies: ChexSystems, Inc., Early Warning Services, LLC, or both. This may affect your ability to open an account at another financial institution for up to seven years."

32. None of the letters explained why BOFA decided to hold Ms. Ruane responsible for the fraud.

33. Each of the five fraudulent checks attached to the September 29, 2016 letter are dated September 24, 2016 and purport to be drawn from a BOFA account belonging to "Grand Lux Café LLC, The Cheesecake Factory Inc, 26950 Agoura Road, Calabasas Hills." There is no state or zip code for this entity included on the checks.

34. The supposed payer's signature on the front of each of the five checks bears an exact resemblance to the signature of now former-U.S. President Barack Obama.

35. Meanwhile, the signature endorsement on the back of each of the checks bears no resemblance whatsoever to Ms. Ruane's actual signature.

36. Ms. Ruane has never worked for nor received any checks from "Grand Lux Café LLC" or "The Cheesecake Factory Inc". Nor has she ever worked for any business in Calabasas Hills.

37. On or about October 5, 2016, Ms. Ruane went to a BOFA branch in San Leandro, California and asked to withdraw her most recent paycheck of \$398.81, deposited into her BOFA checking account on September 30, 2016, and her most recent pension disbursement of \$971.43, deposited into her BOFA account on October 3, 2016, totaling \$1,370.24.

38. The BOFA teller gave Ms. Ruane \$912.33 and told her the lower amount was the result of bank fees and charges posted to the account after it was closed. BOFA did not provide any documentation itemizing these fees and charges.

39. Ms. Ruane's September 15, 2016 to October 13, 2016 bank statement shows a \$60.00 "returned item chargeback fee" charged on September 29, 2016 and two legal order fees charged on September 30, 2016 in the amounts of \$54.18 and \$125.00. Upon information and belief these fees are related to the fraud on her account.

40. Ms. Ruane received another letter from BOFA dated October 11, 2016, stating that her account has been closed.

41. Without a bank account, Ms. Ruane was not able to receive her widow's pension from Ireland, and as a result, was unable to pay rent and support her family.

42. Ms. Ruane went to three or four banks in California including Wells Fargo and BBVA Compass and applied to open a bank account. Each bank turned her down.

43. Ms. Ruane opened a Green Dot prepaid debit card that she could use to access her wages. However, she could not receive her Irish widow's pension through this prepaid card.

44. Unable to support herself and her family without access to her widow's pension, Ms. Ruane had no choice but to relocate to Brooklyn, New York on or about December 7, 2016 and to move in with her mother.

45. On January 4, 2017, Ms. Ruane contacted the NYC Financial Justice Hotline at New Economy Project, a small nonprofit advocacy organization, for assistance.

46. New Economy Project reviewed BOFA's letters and Ms. Ruane's December 20, 2016 report from ChexSystems, an agency that reports consumers' banking behavior as reported by banks.

47. According to the December 20, 2016 ChexSystems report, on or around October 7, 2016, BOFA negatively reported Ms. Ruane to ChexSystems for "suspected fraud activity."

48. Upon information and belief, BOFA also negatively reported Ms. Ruane to Early Warning Services, a similar type of consumer reporting agency of which BOFA is an owner.

III. Plaintiff's ChexSystems Dispute

49. New Economy Project assisted Ms. Ruane draft a dispute letter to ChexSystems.

50. On or about March 2, 2017, Ms. Ruane mailed the dispute letter to ChexSystems, and mailed a copy to Bank of America, both by Certified Mail Return Receipt Requested. The dispute letter states in relevant part

I did not engage in any fraud activity. In September of 2016, without my knowledge or consent, an unknown thief accessed my Bank of America checking account and deposited five fake checks ... fraudulently signed 'Barack Obama.' When I detected this fraud, I immediately reported the fraud to Bank of America, but instead of resolving this issue in my favor, Bank of America closed my account and reported me negatively to ChexSystems. ... This item should be removed from my ChexSystems report because I was not in any way responsible for the fraudulent deposits.

51. ChexSystems sent Ms. Ruane a response dated April 11, 2017, which states “the investigation of information contained in your consumer file at ChexSystems is complete” and “[t]he information submitted to ChexSystems by [BOFA] has been verified to be accurate.”

52. Two of the five fraudulent checks are attached to the ChexSystems response.

53. Ms. Ruane also received a response from BOFA dated March 24, 2017, that states “We’ve completed our investigation and have confirmed the information we previously provided to the CRAs is accurate.” The BOFA letter provides no further explanation.

IV. BOFA’s Failure to Properly Investigate

54. Upon information and belief, BOFA did not conduct a good-faith investigation of Ms. Ruane’s dispute of fraudulent activity on her account, although federal law and regulations require that BOFA do so, and although BOFA was in the best position to obtain and review information regarding the disputed deposits on Ms. Ruane’s account.

55. Upon information and belief, BOFA either did not review a sample of Ms. Ruane’s actual signature – *e.g.*, from documents Ms. Ruane likely signed upon opening her BOFA accounts – or ignored the fact that Ms. Ruane’s actual signature bears no resemblance whatsoever to the forged endorsement on the fraudulent checks.

56. Upon information and belief, BOFA either did not review Ms. Ruane’s pattern of use such as location and types of transactions on her BOFA checking account, or ignored the fact that Ms. Ruane’s pattern of use showed that she was not in New York at the time of the check deposits, that she had never deposited any checks from “Grand Lux Café LLC” or “The Cheesecake Factory Inc”, and that she received her paychecks by direct deposit.

57. BOFA also ignored the fact that the supposed payer’s signature on the fraudulent checks bears an exact resemblance to the signature of U.S. President Barack Obama. Moreover,

BOFA was on notice of at least one other case in which fraudulent checks were deposited into the bank account of another BOFA customer in December 2015 also bearing the fake signature of Barack Obama.

58. BOFA also ignored the fact that Ms. Ruane had informed the bank on or about September 27, 2016 that there were log-ins to her account from a phone she did not recognize.

59. Upon information and belief, BOFA has a pattern and practice of representing to certain consumers, especially lower-income consumers and African-American consumers, that BOFA has conducted a good-faith investigation of their disputes of fraudulent activity, when in fact BOFA has not; and of refusing to limit these consumers' liability for fraud.

60. New Economy Project, along with Bromberg Law Office, P.C., which represents Ms. Ruane in the instant lawsuit, currently have a pending federal lawsuit against BOFA alleging the bank's failure to conduct a proper investigation and limit a customer's liability as required by law, where fraudulent checks bearing the signature of former-U.S. President Barack Obama were deposited into a low-income African-American BOFA customer's account in December 2015.

61. Ms. Ruane opened an account at Brooklyn Cooperative Federal Credit Union on or about January 12, 2017. While she is now able to receive her widow's pension with this account, due to a higher exchange rate charged by the Credit Union she receives significantly less money from each disbursement than she did with BOFA. In addition, whereas she was able to access her pension distribution the following day from BOFA, it takes several days for her to access it at the Federal Credit Union.

62. On or about May 25, 2017, Ms. Ruane went to the Citibank branch located at 430 Myrtle Avenue, Brooklyn, New York 11205 and applied to open a bank account. Soon after, she received a denial letter from Citibank dated May 27, 2017, stating that the denial "was based in

whole or in part on information received from the reporting agency or agencies listed below.”

The letter goes on to list the consumer reporting agency ChexSystems.

63. Ms. Ruane describes this ordeal as a “bizarre, complicated, and emotionally taxing life experience,” which has left her bereft and depressed.

64. BOFA’s actions – holding her responsible for the fraud, closing her account, and negatively reporting her to ChexSystems – left Ms. Ruane without access to a bank account and therefore unable to receive her widow’s pension, pay rent, and otherwise support her family.

65. At the age of forty-five, Ms. Ruane was forced to leave her job at FedEx where she had worked for about five years and relocate to New York to move in with her mother.

66. At the time of filing this Complaint, Ms. Ruane is still trying to find a job and get back on her feet.

67. Ms. Ruane had worked hard to improve her job prospects at FedEx and decided to relocate to California in September 2016 because the company’s California business was quickly expanding and she heard there were enhanced opportunities for job growth and promotion in that state. Ms. Ruane was hopeful that her long-term tenure at FedEx combined with her relocation to California would position her well for a promotion to management. This dream came crashing down when BOFA held her liable for the fraudulent checks deposited into her account.

68. Upon information and belief, FedEx will not re-hire her due to her abrupt departure from the company.

V. *ChexSystems’s FCRA and NY FCRA Violations*

69. Upon information and belief, ChexSystems deliberately, willfully, intentionally, recklessly, and negligently failed to perform a reasonable reinvestigation of Ms. Ruane’s dispute as required by the FCRA, and failed to maintain reasonable procedures designed to assure

maximum possible accuracy of the information in the consumer reports it has disseminated regarding Ms. Ruane.

70. Instead, ChexSystems relied solely on information and documents it had received from BOFA; failed to review, or did not adequately review, documents it had received from BOFA; and failed to conduct an independent evaluation of the accuracy of the disputed reporting.

71. Upon information and belief, ChexSystems knew or should have known that the information BOFA reported and certified to ChexSystems regarding Ms. Ruane was inaccurate and incomplete; could not be verified; and that the documents ChexSystems received from BOFA did not support the information BOFA reported and certified regarding Ms. Ruane.

72. In its April 11, 2017 letter, ChexSystems simply states that BOFA “verified” the disputed information on Ms. Ruane’s consumer report, providing no explanation as to how the bank reached this determination.

73. The April 11, 2017 letter also states “examples of the deposited checks as well as account statements” are enclosed. The enclosures only include two of the five fraudulent checks and include nothing indicating that Ms. Ruane was responsible for the fraud.

74. Upon information and belief, ChexSystems did not attempt to contact Ms. Ruane or seek copies of the three missing counterfeit checks.

75. To date, ChexSystems has continued to maintain its file on Ms. Ruane, and to report, the inaccurate, derogatory information provided by BOFA to ChexSystems regarding Ms. Ruane.

76. To date, ChexSystems has continued to report materially misleading information on consumer reports regarding Ms. Ruane. The consumer report enclosed with ChexSystems’s

April 11, 2017 letter states that the disputed information has been “verified” by BOFA, though in fact the disputed information is incorrect.

77. Upon information and belief, ChexSystems has shared inaccurate, derogatory information about Ms. Ruane with at least one third-party, including a bank other than Bank of America.

78. Since being negatively reported to ChexSystems, Ms. Ruane has been denied a bank account by at least one bank, which attributed its denial to information it had received from ChexSystems.

VI. BOFA’s FCRA Violations

79. After blaming Ms. Ruane for depositing fraudulent checks without explanation and closing her account thereby cutting off access to her widow’s pension and causing serious hardship, BOFA added insult to injury by reporting Ms. Ruane for “suspected fraud activity” to ChexSystems (and possibly other consumer reporting agencies), even though Ms. Ruane herself was the victim of fraud.

80. Upon information and belief, BOFA knew or should have known the information and documents it provided and certified to ChexSystems regarding Ms. Ruane were inaccurate.

81. The signature endorsement on the back of the checks bears no resemblance to Ms. Ruane’s actual signature and the supposed payer’s signature on the front of the checks bears an exact resemblance to the signature of now former-U.S. President Barack Obama

82. In December 2016, a federal lawsuit was brought against BOFA in the Southern District of New York alleging that the bank failed to conduct a good-faith investigation of fraudulent and unauthorized transactions on a consumer’s bank accounts including the deposit of counterfeit checks bearing the very same Barack Obama signature.

83. BOFA failed to conduct a reasonable reinvestigation of Ms. Ruane's dispute after being informed by ChexSystems and willfully reported and certified information to ChexSystems that BOFA knew to be inaccurate.

84. As stated above, upon information and belief BOFA also reported Ms. Ruane to Early Warning Services a consumer reporting agency owned in part by BOFA.

85. Despite Ms. Ruane's repeated efforts to explain to BOFA that she was not responsible for and knew nothing about the fraudulent checks and despite obvious signs of fraud including the fake Barack Obama signatures, BOFA has willfully continued to verify its negative reporting of Ms. Ruane to consumer reporting agencies. In a letter to Ms. Ruane dated March 24, 2017, BOFA stated "We've completed our investigation and have confirmed the information we previously provided to the [consumer reporting agencies] is accurate."

VII. Electronic Fund Transfer Act and Regulation E

86. The federal Electronic Fund Transfer Act of 1978 (EFTA), 15 U.S.C. § 1693 *et seq.*, provides "a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems." 15 U.S.C. § 1693(b). Regulation E (Reg. E) is the set of federal regulations whose stated purpose is to carry out the purposes of the EFTA. 12 C.F.R. § 1005 *et seq.*

87. The EFTA's primary purpose is "the provision of individual consumer rights." 15 U.S.C. § 1693(b).

88. Under the EFTA, a financial institution must follow specific "error resolution" procedures after a consumer disputes an "error," which includes an unauthorized electronic fund transfer. 15 U.S.C. § 1693f(f)(1). The error resolution procedures require that a financial institution "investigate the alleged error, determine whether an error has occurred, and report or

mail the results of such investigation and determination to the consumer within ten business days.” 15 U.S.C. § 1693f(a)(3).

89. If a financial institution denies a consumer’s claim of error, it must explain its findings and, upon the consumer’s request, provide the consumer with copies of the documents it relied upon in its investigation to conclude that an error did not occur. 15 U.S.C. § 1693f(d); 12 C.F.R. § 1005.11(d).

90. Upon information and belief, banks routinely violate the EFTA and Regulation E by imposing liability on customers, particularly lower-income customers, by claiming or implying that customers are responsible for the disputed transactions.

91. A consumer may recover actual damages, plus an additional sum in the \$100-\$1,000 range, the costs of the action, and a reasonable attorney’s fee, for a bank’s violations of the EFTA. 15 U.S.C. § 1693m(a)(1)-(3).

92. A court may award treble damages if it finds that a financial institution “did not make a good faith investigation of the alleged error,” “did not have a reasonable basis for believing that the consumer’s account was not in error”, or “knowingly and willfully concluded that the consumer’s account was not in error when such conclusion could not reasonably have been drawn from the evidence available to the financial institution at the time of its investigation.” 15 U.S.C. § 1693f(e).

FIRST CLAIM FOR RELIEF
(Electronic Fund Transfer Act, 15 U.S.C. § 1693 *et seq.*)
(Against Defendant BOFA)

93. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs with the same force and effect as though fully set forth herein.

94. This claim arises under the Electronic Fund Transfer Act (EFTA) and Regulation E because it relates to fraudulent and unauthorized electronic fund transfers.

95. The ways in which Defendant BOFA violated the EFTA and Regulation E include but are not limited to the following:

- a. Failing to limit Plaintiff's liability for the fraudulent and unauthorized electronic fund transfers in accordance with the EFTA and Regulation E;
- b. Failing to conduct a good-faith investigation after Plaintiff's notified the bank of unauthorized funds deposited into her account;
- c. Failing to provide Plaintiff, within three business days after the conclusion of BOFA's investigation, with an explanation for BOFA's findings; and
- d. Failing to provide Plaintiff with copies of documentation that BOFA relied on to reach its determination that there was no error or fraud.

96. These actions are in violation of 15 U.S.C. §§ 1693f and 1693g and 12 C.F.R. §§ 1005.6 and 1005.11.

97. As a direct and proximate result of BOFA's violations of the EFTA and Regulation E, Plaintiff has sustained actual damages, plus such other damages as may be determined by the court. Plaintiff is entitled to recover actual damages, plus an additional sum of between \$100 to \$1000, the costs of the action, and a reasonable attorney's fee. 15 U.S.C. § 1693m.

98. As a direct and proximate result of BOFA's violations of EFTA and Regulation E, Plaintiff suffered compensable harm, including actual damages and emotional distress.

99. Because BOFA lacked a reasonable basis for denying Plaintiff's fraud claim, Plaintiff is also entitled to recover treble damages under § 1693f(e).

SECOND CLAIM FOR RELIEF

(N.Y. Gen. Bus. Law § 349)

(Against Defendant BOFA)

100. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs with the same force and effect as though fully set forth herein.

101. New York prohibits “deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state. . . .” N.Y. Gen. Bus. Law § 349(a).

102. An individual “injured by reason of any violation of this section may bring an action in his own name to enjoin such unlawful act or practice, an action to recover his actual damages or fifty dollars, whichever is greater, or both such actions.” N.Y. Gen. Bus. Law § 349(h).

103. Defendant BOFA violated § 349 of the New York General Business Law by using deceptive acts and practices in the conduct of its business.

104. BOFA’s violations include, but are not limited to, representing to Plaintiff that BOFA had performed a good-faith investigation of her fraud claim, when in fact BOFA did not do so and representing to Plaintiff that BOFA’s records show that she deposited the fraudulent checks in question when in fact their records indicate numbers signs that Plaintiff was the victim not the perpetrator of the fraud, including the filing of a lawsuit regarding fraudulent checks bearing the signature of Barack Obama’s signature in December 2016.

105. BOFA’s conduct has a broad impact on consumers at large.

106. Upon information and belief, BOFA’s conduct is directed toward consumers at large.

107. Upon information and belief, BOFA has a pattern and practice of representing to consumers that it has conducted a good-faith investigation of their fraud claims, when in fact BOFA has not.

108. As a direct and proximate result of BOFA's violations of § 349 of the New York General Business Law, Plaintiff has sustained actual damages in an amount to be proved at trial and is also entitled to punitive damages, injunctive relief, costs and attorney's fees.

THIRD CLAIM FOR RELIEF
(Breach of Duty of Good Faith and Fair Dealing)
(Against Defendant BOFA)

109. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs with the same force and effect as though fully set forth herein.

110. Section 1-203 of New York State's Uniform Commercial Code imposes an obligation of good faith in the performance of any contract.

111. Section 4-103 of New York State's Uniform Commercial Code further states that no bank may disclaim responsibility for its own lack of good faith or failure to exercise ordinary care in the performance of its obligations.

112. Furthermore, New York law provides that all contracts contain an implied covenant of good faith and fair dealing in the course of performance.

113. Defendant BOFA breached this duty, and indeed acted in bad faith, by holding Plaintiff liable for the fraudulent checks deposited into her account.

114. As a result of Defendant BOFA's breach of the duty of good faith and fair dealing, Plaintiff is entitled to damages in an amount to be determined at trial.

FOURTH CLAIM FOR RELIEF

(Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*)
(Against Defendant BOFA)

115. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs with the same force and effect as though fully set forth herein.

116. Defendant BOFA is liable to Plaintiff for engaging in willful and negligent conduct in violation of the FCRA.

117. BOFA's violations of the FCRA include, but are not limited to:

- a. Failing to conduct a reasonable investigation of the information disputed by Plaintiff;
- b. Failing to review all relevant information provided to BOFA by ChexSystems concerning Plaintiff's accounts; and
- c. Failing to find that the information disputed by Plaintiff was inaccurate and incomplete, to report such a finding to all nationwide consumer reporting agencies to which BOFA furnished the information, and to delete or permanently block the reporting of the disputed information.

118. As a direct and proximate result of BOFA's willful and negligent conduct in violation of the FCRA, Plaintiff suffered compensable harm. Plaintiff is entitled to recover actual damages or damages of not less than \$100 and not more than \$1,000, punitive damages, the costs of the action, and reasonable attorney's fees.

FIFTH CLAIM FOR RELIEF

(Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*)
(Against Defendant ChexSystems)

119. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs with the same force and effect as though fully set forth herein.

120. Defendant ChexSystems is liable to Plaintiff for engaging in willful and negligent conduct in violation of the FCRA.

121. ChexSystems's violations of the FCRA include, but are not limited to:

- a. Failing to conduct a reasonable reinvestigation of derogatory information on Plaintiff's consumer report after receiving notice that Plaintiff disputed said information;
- b. Failing to conduct an independent reinvestigation of the underlying facts and instead relied solely and exclusively on the information furnished by BOFA;
- c. Failing to review and consider all relevant information submitted by Plaintiff concerning her dispute;
- d. Failing to delete the disputed information from Plaintiff's consumer report and file after reinvestigation, even though a reasonable reinvestigation would have revealed the disputed information to be inaccurate and/or incomplete;
- e. Failing to employ and follow reasonable procedures to assure maximum possible accuracy of the information contained in the consumer report; and
- f. Continuing to report the disputed information despite having knowledge of its inaccuracy and/or inability to verify the same.

122. As a direct and proximate result of ChexSystems's willful and negligent conduct in violation of the FCRA, Plaintiff suffered compensable harm. Plaintiff is entitled to recover actual damages or damages of not less than \$100 and not more than \$1,000, punitive damages, the costs of the action, and reasonable attorney's fees.

SIXTH CLAIM FOR RELIEF

(New York Fair Credit Reporting Act, N.Y. Gen. Bus. Law §§ 380-j and 380-k)
(Against Defendant ChexSystems)

123. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs with the same force and effect as though fully set forth herein.

124. Defendant ChexSystems is liable to Plaintiff for engaging in willful and negligent conduct in violation of the NY FCRA.

125. ChexSystems's violations of the NY FCRA include, but are not limited to:

- a. Reporting and maintaining in its file on Plaintiff information that it has reason to know is inaccurate;
- b. Failing to maintain reasonable procedures designed to assure maximum possible accuracy of the information concerning Plaintiff; and
- c. Failing to maintain reasonable procedures designed to avoid the above violations.

126. As a direct and proximate result of ChexSystems's willful and negligent conduct in violation of the NY FCRA, Plaintiff suffered compensable harm. Plaintiff is entitled to recover actual damages, punitive damages, injunctive relief, the costs of the action, and reasonable attorney's fees.

SEVENTH CLAIM FOR RELIEF

(Defamation)
(Against Defendant ChexSystems)

127. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs with the same force and effect as though fully set forth herein.

128. Defendant ChexSystems has published statements in writing to Citibank and possibly to other banks and entities that the above-referenced false and negative information belongs to Plaintiff.

129. ChexSystems has published these statements in response to any bank's or other source's request for a consumer report on Plaintiff.

130. The statements made by ChexSystems are false in that they inaccurately reflect Plaintiff's banking information and history, and paint Plaintiff as criminally dishonest.

131. ChexSystems has published these statements to Citibank and possibly to other banks and entities that have requested Plaintiff's ChexSystems report.

132. ChexSystems knew or should have known that the statements were false when made and had no factual basis for making the statements because Plaintiff had notified ChexSystems, in writing, that the information was inaccurate for the reasons stated above.

133. Nonetheless, ChexSystems has continued to publish the false and negative statements concerning Plaintiff's banking history through the present time.

134. The written statements and publications constitute libel per se.

135. As a direct and proximate result of ChexSystems's unlawful conduct, Plaintiff suffered compensable harm, including actual and emotional distress.

EIGHTH CLAIM FOR RELIEF
(Defamation)
(Against Defendant BOFA)

136. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs with the same force and effect as though fully set forth herein.

137. At the times pertinent hereto, Defendant BOFA has published statements – both orally and through writing, to ChexSystems and possibly to other consumer reporting agencies – that are false and has communicated negative representations concerning Plaintiff's banking information and history.

138. The statements made by BOFA are false as outlined above.

139. BOFA has published these statements at least to Defendant ChexSystems.

140. Defendant BOFA knew or should have known that the statements were false when made and had no factual basis for making the statements, as Plaintiff had notified BOFA that the statements were false for the reasons stated above. However, BOFA continued to publish such statements up through the present time.

141. The written statements and publications constitute libel per se.

142. The oral statements and publications constitute slander per se.

143. Despite repeated notices from Plaintiff, BOFA has acted with malice by failing to communicate information provided by Plaintiff to ChexSystems when responding to ChexSystems's reinvestigation attempts.

144. As a direct and proximate result of BOFA's unlawful conduct, Plaintiff suffered compensable harm, including actual and emotional distress.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Enter judgment for Plaintiff on all causes of action;
2. Enter an injunction requiring Defendant BOFA to comply with the Electronic Fund Transfer Act and Regulation E, and to train its employees accordingly;
3. Enter an injunction requiring Defendant BOFA to cease and desist from pursuing, or to correct, negative action against Plaintiff, including its negative reporting to consumer reporting agencies, as a result of its own failures to comply with the Electronic Fund Transfer Act, Regulation E, and its own deposit account agreement;

4. Entering an injunction requiring Defendant ChexSystems to delete negative information from its file on Plaintiff, and to maintain reasonable procedures designed to assure maximum possible accuracy of the information in its file concerning Plaintiff;
5. Award actual, statutory, consequential, and punitive damages to Plaintiff;
6. Award reasonable attorney's fees and costs to Plaintiff; and
7. Award such other and further relief as may be just, equitable, and proper.

JURY TRIAL DEMANDED.

Dated: New York, New York
June 19, 2017

Respectfully submitted,

/s/ Brian L. Bromberg
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