

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

HARRIET CHAPPLE,
Plaintiff,

-against-

COMERICA BANK, CONDUENT STATE &
LOCAL SOLUTIONS, INC., and the UNITED
STATES DEPARTMENT OF THE TREASURY,

Defendants.

No. 21 Civ. 4978

COMPLAINT

DEMAND FOR JURY TRIAL

PRELIMINARY STATEMENT

1. Plaintiff Harriet Chapple is a disabled, elderly Queens resident who lives alone. Ms. Chapple has extremely limited assets and no income apart from her meager public benefits. She relies on Supplemental Security Income (SSI), a means-tested federal cash assistance program, to meet her basic needs.

2. Ms. Chapple receives her SSI benefits on a “Direct Express” prepaid debit card—this is, each month, her benefit amount is added to the Direct Express card, so that she can use that card to pay her monthly expenses.

3. Defendant Comerica Bank (“Comerica”) issues Direct Express prepaid debit cards as a financial agent for Defendant United States Department of the Treasury (“Treasury”). Defendant Conduent State & Local Solutions, Inc. (“Conduent”) operates portions of the Direct Express program on behalf of Comerica. Defendants Comerica, Treasury, and Conduent (together, “Direct Express”) are responsible for all aspects of the Direct Express prepaid debit

card program. “Direct Express” is not a legal entity. Rather, the name “Direct Express” is a registered mark of Treasury’s Bureau of Fiscal Service (the “Fiscal Service”).

4. On April 12, 2021, two ATM withdrawals totaling approximately \$1,000 were made on Ms. Chapple’s Direct Express account. Ms. Chapple did not make these withdrawals, did not authorize anyone to make them, and does not know who made them. On that same day, Ms. Chapple reported the fraudulent withdrawals to Direct Express, and she followed up the next week with a written fraud report.

5. Defendants were required by law to investigate Ms. Chapple’s fraud claims and limit her liability due to her timely reporting, and the law placed the burden of proof on Defendants to prove that Ms. Chapple authorized the transactions. However, Direct Express denied Ms. Chapple’s fraud claim within a week, purporting to have “found a conflict in the information provided by [Ms. Chapple] and the information resulting from [Direct Express’s] research.” When Ms. Chapple exercised her legal right to request the documents underlying Direct Express’s denial of her claim, Direct Express produced only the relevant account ledger.

6. Ms. Chapple is not alone. Direct Express’s failure to adequately investigate fraud has been widespread and widely reported, including in other lawsuits, by thousands of consumers online, by Senator Elizabeth Warren, and by Treasury’s own Office of the Inspector General.

7. Ms. Chapple now brings this suit for violations of the Electronic Funds Transfer Act (“EFTA”), 15 U.S.C. §1693 *et seq.*, the Due Process Clause of the United States Constitution, and breach of contract.

JURISDICTION AND VENUE

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

9. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. § 1391 because it is the district where a substantial part of the events giving rise to Plaintiff’s claims occurred.

PARTIES

10. Plaintiff Harriet Chapple is a natural person residing in Queens, New York.

11. Ms. Chapple is a “consumer” as that term is defined by EFTA, 15 U.S.C. § 1692a(6).

12. Defendant Comerica Bank (“Comerica”) is a bank chartered under the laws of Texas, with its principal place of business located in Dallas, Texas.

13. Comerica is a “financial institution” as that term is defined by EFTA, 15 U.S.C. § 1693a(9), because it is a State bank.

14. Defendant Conduent State & Local Solutions, Inc. (“Conduent”) is a publicly-traded corporation with its principal place of business located in Florham Park, New Jersey.

15. With respect to Direct Express accounts, Conduent is, upon information and belief, a “financial institution” as that term is defined by EFTA, 15 U.S.C. § 1693a(9), because it, “directly or indirectly, holds [Direct Express] account[s] belonging to . . . consumer[s].” Upon information and belief, Comerica contracts with Conduent to provide services to fulfill its obligations under EFTA.

16. Defendant United States Department of the Treasury (“Treasury”) is a federal agency of the United States.

17. With respect to Direct Express accounts, Treasury is a “financial institution,” as that term is defined by EFTA, because it is a “government agency . . . [that] directly or indirectly issues an access device to a consumer for use in initiating an electronic fund transfer of government benefits from an account.” 12 C.F.R. § 1005.15(a).

BACKGROUND

18. SSI provides subsistence benefits for poor, elderly, or disabled individuals. 42 U.S.C. §§ 1381, 1381a. “The basic purpose underlying the [SSI] program is to assure a minimum level of income for people who are age 65 or over, or who are blind or disabled and who do not have sufficient income and resources to maintain a standard of living at the established Federal minimum income level.” 20 C.F.R. § 416.110. To be eligible for SSI, an individual must be disabled, over the age of 64, or both. 42 U.S.C. § 1382.

19. In addition, SSI recipients are subject to strict income and resource tests that are set by statute. 42 U.S.C. § 1382. An SSI recipient living alone must have less than \$2,000 in available resources to be eligible for SSI. 20 C.F.R. § 416.1205(c).

20. SSI recipients residing in New York State are also eligible to receive a supplement to their SSI benefit that is funded by the State called the New York State Supplement Program (SSP).

21. SSI recipients may receive benefits via direct deposit into a bank account, or on a Direct Express prepaid debit card.

22. Treasury generally does not permit federal benefits, such as SSI, to be paid via paper check. Therefore, individuals who do not have bank accounts typically must receive their benefits via a Direct Express prepaid debit card.

23. A prepaid debit card is a card with a stored value, not linked to any bank account, under which payments may be made for goods and services at unaffiliated merchants. A typical prepaid debit card is branded with a payment network (like Visa or Mastercard) and is usable just like a debit card at ATMs and merchants, but is not attached to a checking account. The main difference between a prepaid debit card and a traditional debit card is that a traditional debit card is linked to an individual bank account, whereas a prepaid debit card is not.

24. Many federal benefits other than SSI are also available via Direct Express prepaid debit card, including veterans' benefits and social security retirement payments.

25. A person enrolled in Direct Express receives monthly benefits deposits on his or her Direct Express account and can use his or her Direct Express card to make purchases at stores or online and to withdraw money from ATMs.

26. Only public benefits or other deposits from Treasury can be deposited into a Direct Express account and so these are the only funds available to be used on a Direct Express card. A consumer cannot add money from other sources to his or her Direct Express card.

27. Only individuals who receive public benefits or other deposits from Treasury can have Direct Express accounts. A private consumer cannot open a Direct Express account separate from his or her participation in one of these public programs.

28. Treasury holds out Direct Express prepaid debit cards as a "safe" option for benefits recipients. Frequently Asked Questions 4, <https://godirect.gov/gpw/about/>.

29. The Social Security Administration likewise says that “[t]he Direct Express® card is both safer and more convenient than paper checks.” <https://www.ssa.gov/pubs/EN-05-10073.pdf>.

30. The Direct Express website states that federal benefits are safe on Direct Express cards and that customers’ money is protected even if a card is lost or stolen. Frequently Asked Questions 1.4, 7.5, <https://www.usdirectexpress.com/faq.html>.

31. In 2008, the Fiscal Service launched the Direct Express program with Comerica as the financial agent.

32. In 2014, the Fiscal Service re-opened the bidding for the Direct Express financial agent agreement and again selected Comerica as the financial agent, for an additional five years.

33. In 2019, the Fiscal Service re-opened the bidding for the Direct Express financial agent agreement and in January 2020 again selected Comerica as the financial agent, for an additional five years.

34. Conduent is a contractor of Comerica with responsibility for administering the Direct Express program. *See* <https://directexpress.info/partners/>. On information and belief, Conduent is responsible for customer service for Direct Express accounts, including fraud investigation.

35. At all times described herein, Comerica was acting as a financial agent of Treasury. *See* Frequently Asked Questions 9.2, <https://www.usdirectexpress.com/faq.html>.

36. On information and belief, at all times described herein, Conduent was acting as an agent of Comerica.

37. On information and belief, at all times described herein, Comerica, Conduent, and/or Treasury held themselves out to be “Direct Express.”

38. All actions taken by the entity holding itself out to be “Direct Express” are attributable to some or all Defendants.

39. Comerica issues a contract titled “Terms of Use for Your Direct Express Debit Mastercard Card” (“Terms of Use”) that forms the contract between the cardholder and Comerica.

40. The Terms of Use state that “BY ACCEPTING THIS CARD, YOU AGREE TO THESE TERMS.” The Terms of Use further state that “If you do not agree to accept the Card under these Terms, do not activate your Card.”

41. The Terms of Use state: “If you are a New York resident, your liability for the unauthorized use of the Card will not exceed \$50.”

42. The Terms of Use also state: “[I]f the written Transaction history or other Card Transaction information provided to you shows transfers that you did not make, tell us at once. If you do not tell us within 120 days after the transfer allegedly in error was credited or debited to your Card Account, you may not get back any money you lost after the 120 days, if we can prove that we could have stopped someone from taking the money if you had told us in time.”

43. The Terms of Use also state: “Tell us AT ONCE if you believe your Card or PIN has been lost or stolen. . . . If you tell us within two Business Day[s], you can lose no more than \$50 if someone used your Card or PIN without your permission.” *See also* Frequently Asked Questions 7.5, <https://www.usdirectexpress.com/faq.html>.

FACTUAL ALLEGATIONS

44. Plaintiff Harriet Chapple is a disabled sixty-nine-year-old residing in Flushing, Queens.

45. Supplemental Security Income (SSI), the accompanying New York State Supplement Program (SSP), and the Supplemental Nutrition Assistance Program (SNAP) are Ms. Chapple's only sources of income. Ms. Chapple has received SSI on the basis of her disability since approximately 1996. She also receives a small monthly benefit from the New York State Supplement Program, which is available only to New York State residents who receive SSI payments and serves as a supplement to those SSI payments. Ms. Chapple receives approximately \$881 in total monthly SSI and SSP benefits (hereinafter referred to as Ms. Chapple's "SSI benefits"). Ms. Chapple also receives approximately \$232 per month in SNAP benefits, which she can use only to purchase food.

46. Ms. Chapple has received her SSI benefits through her Direct Express card since 2009. Because Ms. Chapple did not have a bank account, she had no option but to receive her SSI benefits via a Direct Express card.

47. Ms. Chapple uses her SSI benefits to pay for her living expenses, such as clothing, groceries, and utility bills. For some purchases, Ms. Chapple pays directly using her Direct Express card as a debit card. For others, Ms. Chapple withdraws cash from an ATM using her Direct Express card, and then makes the purchases using cash.

48. When Ms. Chapple withdraws cash from the ATM, she almost always uses an ATM located in a Walgreens store located one block from her apartment in Flushing, Queens.

49. For example, on April 3, 2021, Ms. Chapple withdrew \$300 from that Walgreens ATM, and on April 6, 2021, Ms. Chapple withdrew \$250 from the same Walgreens ATM.

50. Ms. Chapple almost never withdrew more than \$300 on a single occasion. From January 1, 2021 to April 12, 2021, \$300 was the largest amount of cash Ms. Chapple withdrew at one time.

51. On April 7, 2021, Ms. Chapple received a deposit of \$1,400 into her Direct Express account. On information and belief, this deposit was a stimulus payment as part of the American Rescue Plan Act.

52. Stimulus payments under the American Rescue Plan Act are not considered income for the purposes of eligibility for SSI, and are not considered to be resources for the purposes of SSI for twelve months. *See* <https://www.ssa.gov/coronavirus/categories/economic-impact-payments/>. In other words, an SSI beneficiary like Ms. Chapple is permitted to receive the stimulus payment without it counting as income or assets that could otherwise jeopardize her eligibility for the SSI program.

53. Ms. Chapple planned to take a long-awaited trip to South Carolina, where she was born and most of her family still lives. Ms. Chapple also intended to set up an emergency fund in case any unforeseen costs arose. Ms. Chapple had always heard that it is recommended that all Americans have an emergency fund; she felt secure knowing that she had money set aside in case of emergency.

54. On April 12, 2021, two cash withdrawals were made on Ms. Chapple's Direct Express account (the "April 12 Withdrawals"). The April 12 Withdrawals were made at 51-31 Northern Boulevard, Woodside, NY 11377, which is, on information and belief, a Citibank branch.

55. The first April 12 Withdrawal was a cash withdrawal for \$503.00. The second April 12 Withdrawal was a cash withdrawal for \$463.00. Each of the April 12 Withdrawals appears on Ms. Chapple's transaction history as an "ATM CASH WITHDRAWAL." Ms. Chapple's account was also charged a \$0.85 ATM withdrawal fee on April 12, 2021.

56. Ms. Chapple did not make the April 12 Withdrawals, did not authorize anyone else to make them, and does not know who made them.

57. Ms. Chapple did not withdraw any money from any bank or any ATM on April 12, 2021.

58. At no point on April 12, 2021 was Ms. Chapple in Woodside, Queens.

59. To the best of her knowledge, Ms. Chapple has never been to the Citibank location where the April 12 Withdrawals were made.

60. To the best of her knowledge, Ms. Chapple has not been to Woodside, Queens in the last ten years.

61. The Woodside location where these ATM withdrawals were made is over five miles from Ms. Chapple's apartment. Ms. Chapple does not own a car and would have to travel via a taxi, rideshare service, or multiple subway or bus lines in order to reach this location.

62. Ms. Chapple retained possession of her physical Direct Express card at all times on April 12, 2021. Ms. Chapple's Direct Express card was not lost or stolen around this time.

63. Ms. Chapple has never loaned her Direct Express card to anyone or given the card information to anyone.

64. One of the employees at the Walgreens store with the ATM that Ms. Chapple regularly uses later told Ms. Chapple that two other people had reported that they lost money in connection with using that same ATM. Ms. Chapple attempted to ask the Walgreens manager more about this, but the manager said that they could not help her.

65. It is possible that someone used a card skimmer to obtain Ms. Chapple's Direct Express account information. Skimmers are devices attached to ATMs or credit/debit card processing devices to steal the credit card and PIN numbers of customers.

66. Later that same day, April 12, 2021, Ms. Chapple called Direct Express to check on her account balance.

67. An automated Direct Express phone system provided Ms. Chapple with her account balance, and Ms. Chapple recognized that her balance was much lower than it should have been.

68. Immediately after that call, Ms. Chapple became panicked about the missing funds. She called the Direct Express customer service line and cancelled her Direct Express card through the automated system.

69. Ms. Chapple made a third phone call on April 12, 2021 to Direct Express and spoke with a customer service representative.

70. Ms. Chapple told the customer service representative that approximately \$1,000 was suddenly missing from her Direct Express account.

71. The Direct Express representative told Ms. Chapple that there were three recent ATM transactions on her account: (1) the first April 12 Withdrawal, for \$503.00 at 51-31 Northern Blvd; (2) the second April 12 Withdrawal, for \$463.00 at 51-31 Northern Blvd; and (3) the April 6, 2021 ATM cash withdrawal for \$250 at the Walgreens near Ms. Chapple's apartment. The Direct Express representative asked if Ms. Chapple was disputing the three most recent ATM transactions which totaled roughly the amount Ms. Chapple noticed was missing.

72. Ms. Chapple understood the Direct Express representative to be telling her the three most recent ATM transactions were fraudulent.

73. Ms. Chapple therefore answered in the affirmative, stating that she was disputing these three transactions. Direct Express assigned Ms. Chapple's fraud complaint Case/Program Number 000000387453.

74. Ms. Chapple now understands that the April 6th Walgreens ATM withdrawal was not fraudulent, and was, in fact, her own withdrawal.

75. Following Ms. Chapple's oral report of fraud to Direct Express, Direct Express mailed Ms. Chapple a Questionnaire of Fraud to complete.

76. On April 20, 2021, Ms. Chapple filled out the Questionnaire and sent it to back to Direct Express.

77. In the Questionnaire of Fraud, Ms. Chapple explained: "I am at a lost [sic] to explain the details surrounding the use of my card because I was in possession of my card when I called Direct Express to check my account and was informed that I had over \$1,000 missing from my account. I believe at least two large cash withdrawals was taken from my account on the same day April 12, that I called Direct Express."

78. Where the Questionnaire of Fraud asked Ms. Chapple to list unauthorized transactions, Ms. Chapple listed the three transactions that were relayed to her over the phone on April 12, 2021: the two April 12 Withdrawals, and the April 6th Walgreens ATM withdrawal.

79. Less than a week later, on April 26, 2021, Ms. Chapple received notice that the Direct Express Fraud Services Department completed an investigation of her claim and could not confirm whether fraud occurred.

80. The Fraud Services Department wrote "[d]uring our investigation we found a conflict in the information provided by you and the information resulting from our research. Based on this information, we cannot confirm that fraud occurred. You may request a copy of the documents in which we relied in making our determination by contacting us at (844) 526-9349."

81. The Fraud Services Department recommended that Ms. Chapple report the incident to local law enforcement or attempt to resolve it by contacting the merchant directly.

82. Following this letter, Ms. Chapple called (844) 526-9349 twice and each time she was put on hold for an extended period of time and ultimately was unable to get through to a Direct Express representative.

83. On May 27, 2021, Ms. Chapple called the Fraud Services Department. After being placed on hold for over forty minutes, she finally reached a Direct Express representative. Ms. Chapple then requested a copy of the documents on which Direct Express relied in making its determination.

84. On May 31, 2021, Ms. Chapple went to her local police precinct to report the theft. The police officer she spoke to told her that they required documents more formal than her word to proceed with any investigation. The officer advised that Ms. Chapple bring a notarized document confirming her statement or bring the fraud report from Direct Express. She gave Ms. Chapple a standard pamphlet titled “Steps for Reporting Identity Theft.”

85. On June 2, 2021, Ms. Chapple received a two-page document in the mail from Direct Express. This two-page document was Ms. Chapple’s April 2021 Transaction Summary. This document listed every transaction Ms. Chapple made in April 2021, akin to a transaction summary that would be available for a bank account online.

86. Direct Express did not provide any other information or documentation underlying Direct Express’s determination.

87. On July 27, 2021, Ms. Chapple reported the fraudulent transactions directly to Treasury by writing a letter to the Acting Commissioner of the Fiscal Service. In the letter, Ms. Chapple stated that the April 12 Withdrawals, which totaled \$966, were fraudulent. She did not report the April 6th Walgreens withdrawal as fraudulent, because by that time she understood that it was her own withdrawal.

88. On July 30, 2021, Direct Express's Fraud Service Department sent Ms. Chapple a new letter denying her claim of fraud. The letter stated that "the Fraud Service Department recently reopened our investigation of your claim dated 04/12/2021 in the amount of \$1216.00 for further review."

89. The Fraud Service Department "determined no error was made" and again denied Ms. Chapple's claim.

90. Direct Express did not meet its burden of proof to show that the April 12 Withdrawals were unauthorized. In fact, Direct Express produced no evidence that the April 12 Withdrawals were authorized.

91. When, consistent with its obligations under EFTA, Direct Express provided Ms. Chapple the documentation underlying its purported investigation, it provided only her April 2021 Transaction Summary. This document listed Ms. Chapple's transactions for the month of April. It could not prove that the April 12 Withdrawals were authorized; if anything, it showed that the April 12 Withdrawals were not typical of Ms. Chapple's transactions.

92. On information and belief, Direct Express did not make a good faith investigation of the fraud reported by Ms. Chapple. Again, documents provided by Direct Express show that they only reviewed Ms. Chapple's account ledger.

93. Direct Express did not have a reasonable basis for believing that the April 12 Withdrawals were made by Ms. Chapple or otherwise authorized by her.

94. Direct Express knowingly and willfully concluded that the April 12 Withdrawals on Ms. Chapple's account were authorized when this conclusion could not reasonably have been drawn from the evidence available at the time of its investigation.

95. If Direct Express had conducted a good faith investigation of Ms. Chapple's claim, that investigation would have revealed that the April 12 Withdrawals were unauthorized transfers and would have resulted in Ms. Chapple's account being fully recredited.

96. On information and belief, Direct Express does not have an appeal process through which Direct Express's denial of consumers' fraud claims can be appealed. Neither the denial letters that Ms. Chapple received nor the Terms of Use refer to any such appeal process.

97. As a result of Defendants' actions, Ms. Chapple lost \$966.85.

98. Ms. Chapple's niece passed away shortly after the fraud on her account occurred. Ms. Chapple could not afford to go to her niece's funeral in South Carolina because she did not have access to the \$966.85 that had been taken from her account without her authorization, and that Defendants unlawfully failed to recredit.

99. Following the loss of her funds, Ms. Chapple felt afraid that her funds would be stolen again.

100. Ms. Chapple experienced garden variety emotional distress because of Defendants' actions.

101. Ms. Chapple had to borrow \$300 from a friend to ensure that she would be able to afford basic living necessities. She has been unable to pay this loan back.

102. Ms. Chapple felt panic and disbelief upon learning that her funds were missing and upon learning that Direct Express had denied her fraud claim. She was worried that she would be unable to pay her rent. While Ms. Chapple was eventually able to pay her rent, she had extremely limited funds to live on for the remainder of the month (essentially only her SNAP benefits to pay for food) and was not able to, for example, take a taxi at times when she needed one.

103. Since the April 12 Withdrawals, Ms. Chapple has not felt safe keeping large amounts of money in her Direct Express account.

104. Almost all of Ms. Chapple's family currently lives in South Carolina. Ms. Chapple has not been able to visit her family in South Carolina for over three years.

105. Ms. Chapple felt dejected and inconsolable because she was unable to afford to travel to her niece's funeral in South Carolina. Ms. Chapple had a close relationship with her niece; she was devastated by her inability to be with her family during this time.

OTHER COMPLAINTS REGARDING DIRECT EXPRESS FRAUD PROCEDURES

106. Direct Express's failure to adequately investigate fraud has been widespread, and widely reported.

107. Senator Elizabeth Warren conducted an investigation of fraud affecting the Direct Express program. In a letter to Treasury dated January 10, 2019, Senator Warren reported that this investigation revealed that: (1) hundreds of Direct Express users were affected by fraud, with an average of nearly \$1,000 stolen per affected individual; (2) the Social Security Administration, Veteran Affairs officials and the public were not adequately informed of fraud affecting their program beneficiaries; and (3) there were multiple ongoing investigations of the Direct Express fraud schemes and other aspects of the Direct Express program.¹

108. Senator Warren urged Treasury to modify the contract between Treasury and Comerica to (a) ensure that its agreements contained appropriate protections to prevent fraud, regardless of its cause; (b) guarantee that instances of fraud that affect Direct Express program participants would be resolved quickly with no cost or loss of benefits for program beneficiaries; and (c) require prompt notification and proper warnings for beneficiaries of any fraud affecting

¹ Available at <https://www.warren.senate.gov/imo/media/doc/2019.01.09%20Letter%20to%20Treasury%20on%20Comerica%20Direct%20Express%20Program.pdf>.

the problem. According to Senator Warren, these modifications would “ensure improvements in the financial agent’s ability to prevent and respond to fraud schemes or security vulnerabilities.”

109. The Treasury’s Office of the Inspector General (“Inspector General”) issued reports concerning Treasury and Comerica’s oversight of the Direct Express program in 2014, 2017, 2018, 2019, and 2020.

110. In 2014, the Inspector General issued a report titled “Fiscal Service Needs to Improve Program Management of Direct Express” containing 13 recommendations concerning Treasury’s management of the Direct Express Program. Fiscal Service Needs to Improve Program Management of Direct Express, OIG-14-031 (March 26, 2014).²

111. In 2019, the Inspector General issued an audit concerning the corrective actions taken by Treasury related to the financial agency agreement with Comerica to operate Direct Express. The audit recommended that Direct Express and Comerica improve systems to proactively respond to fraudulent activity. Treasury OIG, Interim Audit Update – Matters for Consideration Prior to Fiscal Service’s Selection of the Direct Express® Debit Card Program Financial Agent, OIG-19-041 (July 29, 2019).³

112. In 2020, the Office of the Inspector General urged the Fiscal Service to re-open recommendations stemming from the initial 2014 report. Corrective Action Verification for Two Prior OIG Reports: (1) Fiscal Service Needs to Improve Program Management of Direct Express (OIG-14-031) and (2) Direct Express Bid Evaluation Documentation Requires Improvement (OIG-17-034), OIG-20-028 (March 2, 2020).⁴

113. Dozens of consumers have submitted formal complaints to the Consumer Financial Protection Bureau regarding Direct Express’s handling of their fraud complaints. For

² Available at https://oig.treasury.gov/sites/oig/files/Audit_Reports_and_Testimonies/OIG-14-031.pdf.

³ Available at <https://www.oversight.gov/sites/default/files/oig-reports/OIG-19-041.pdf>.

⁴ Available at https://oig.treasury.gov/sites/oig/files/Audit_Reports_and_Testimonies/OIG-20-028.pdf.

example, one consumer complained that after he promptly reported \$970 in unauthorized charges, Defendants ignored his certified letters, faxes, emails, and hung up on him when he attempted to contact them.⁵

114. In addition, hundreds of Direct Express users receiving government benefits have expressed dissatisfaction with the Direct Express program's response to their fraud complaints on various other platforms on the internet, including the Better Business Bureau, Yelp, Facebook, Twitter, Reddit, and Consumer Affairs. For example, on Facebook.com there is a group named "Direct Express Cardholder Victims" with roughly 1,500 members. The group's goal is to "empower Direct Express Cardholders by assisting recover losses due to fraudulent activity ignored by Comerica Bank and the Conduent call center."

115. Comerica regularly responds to consumer complaints by placing the blame on Conduent. For example, in response to a consumer's Better Business Bureau complaint about the handling on fraud on a Direct Express Card, Comerica stated that: "This complaint involves a debit card that is not managed or serviced by Comerica Bank. This complaint should be directed to: CONDUENT 9601 Amberglen Blvd, Suite 200 Austin, TX 78729." This response is similar to many posted by Comerica across platforms.

116. Numerous lawsuits have been filed based on the Direct Express program's failure to investigate fraud claims.⁶

117. The Direct Express program's failures to adequately address fraud claims have also been widely reported in the press.⁷

⁵ See <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4351201>.

⁶ See, e.g., *Watson v. Conduent State & Local Solutions, Inc. et al.*, No. 19-cv-0355 (N.D. Ohio 2019); *Keel v. Direct Express Bank Fraud Services Department*, No. 19-cv-3813 (E.D. Penn. 2019); *Smith v. Direct Express et al.*, No. 17-cv-6204 (E.D.N.Y. 2017); *Carnley et al v. Conduent Business Services, LLC et al.*, No. 19-cv-01075 (W.D. Tex. 2019).

STATUTORY BACKGROUND: THE ELECTRONIC FUNDS TRANSFER ACT

118. The Electronic Funds Transfer Act (“EFTA”), 15 U.S.C. § 1693 *et seq.*, was enacted to “provi[de] . . . individual consumer rights” in connection with electronic funds transfer systems, including prepaid debit card accounts.

119. EFTA is implemented by Regulation E, codified at 12 C.F.R. Part 1005.

120. Each Defendant is a “financial institution” as that term is defined by EFTA. *See* 15 U.S.C. § 1693a(9); 12 C.F.R. §§ 1005.2(d), 1005.15(a)(1).

121. EFTA specifically applies to a subset of prepaid debit card accounts called “government benefit accounts,” which are defined as “account[s] established by a government agency for distributing government benefits to a consumer electronically, such as through automated teller machines or point-of-sale terminals.” 12 C.F.R. § 1005.15(a)(2).

122. Direct Express accounts are “government benefit accounts” as defined by EFTA..

123. Indeed, the Direct Express website states that “consumer protections required by Regulation E (12 CFR 1005)” apply to Direct Express accounts. Frequently Asked Questions 1.4, <https://www.usdirectexpress.com/faq.html>.

124. An “access device” is defined as “card, code, or other means of access to a consumer’s account, or any combination thereof, that may be used by the consumer to initiate electronic fund transfers.” 12 C.F.R. § 1005.2.

125. With respect to Direct Express accounts, the “access device” is the Direct Express card.

126. As relevant here, EFTA provides two key protections to consumers. The first is a “substantive” protection, under which consumers are *not* liable for unauthorized charges on their

⁷ *See, e.g.*, Kate Berry, *Comerica scrambles to address fraud in prepaid benefits program*, AM. BANKER, Aug. 26, 2018, <https://www.americanbanker.com/payments/news/comerica-scrambles-to-address-fraud-in-prepaid-benefits-program>.

account unless the financial institution can bear its burden to prove that the charges were, in fact, authorized by the consumer. The second is a “procedural” protection, under which a financial institution must follow certain procedures when a consumer claims that an error, such as an unauthorized transfer, was made on his or her account. These protections are described in more detail below.

127. EFTA protects consumers by limiting consumer liability for unauthorized charges on their accounts. 15 U.S.C. § 1693g(a). Specifically, EFTA protects against “unauthorized electronic fund transfers,” which are defined as “an electronic fund transfer from a consumer’s account initiated by a person other than the consumer without actual authority to initiate the transfer and from which the consumer receives no benefit.” 12 C.F.R. § 1005.2(m).

128. EFTA provides that “[i]n any action which involves a consumer’s liability for an unauthorized electronic fund transfer, *the burden of proof is upon the financial institution to show that the electronic fund transfer was authorized.*” 15 U.S.C. § 1693g(b) (emphasis added).

129. The extent of a consumer’s liability for unauthorized charges depends on what type of unauthorized charges were reported (whether the card was lost/stolen, or not) and when the consumer reports the fraud to the financial institution (within two business days, or after a longer period of time).

130. For unauthorized charges stemming from the loss or theft of the access device, “[i]f the consumer notifies the financial institution within two business days after learning of the loss or theft of the access device, the consumer’s liability shall not exceed” \$50. 12 C.F.R. § 1005.6(b)(1).

131. For unauthorized charges that *do not* stem from the loss or theft of the access device, Government benefit accounts may elect to provide any one of three different timing

rules. Under these rules, a consumer has no liability for unauthorized transfers about which the consumer notified the institution (a) within 60 days of transmittal of the monthly statement showing the transfer or a written history of the account that shows the transfer, 12 C.F.R. §§ 1005.6(b)(3), § 1005.15(e)(3)(i)(B); (b) within 60 days of the date that the consumer electronically accesses the account, so long as the electronic account shows the unauthorized transfer, 12 C.F.R. § 1005.15(e)(3)(i)(A); or (c) “within 120 days after the transfer was credited or debited to the consumer’s account,” 12 C.F.R. § 1005.15(e)(3)(ii).⁸

132. Direct Express has elected to apply the third option, under which a consumer has no liability for any transaction reported within 120 days after the transfer was credited or debited. 12 C.F.R. § 1005.15(e)(3)(ii). The Direct Express website states: “if the written Transaction history or other Card Transaction information provided to you shows transfers that you did not make, tell us at once. If you do not tell us within 120 days after the transfer allegedly in error was credited or debited to your Card Account you may not get back any money you lost after 120 days, if we can prove that we could have stopped someone from taking the money if you had told us in time.” Frequently Asked Questions 7.5, <https://www.usdirectexpress.com/faq.html>.

133. EFTA’s second primary protection is procedural: EFTA protects consumers by requiring financial institutions to have appropriate procedures for resolving problems on consumers’ accounts, including unauthorized charges.

⁸ In other words, “a government agency” may elect the “periodic statement alternative,” which allows for a “60-day period for reporting unauthorized transfers begin[ning] on the earlier of the date the consumer electronically accesses the account (provided the electronic history reflects the unauthorized transfer) or the date the agency sends the first written account transaction history reflecting the unauthorized transfer. Alternatively, an agency may limit a consumer’s liability for any transfer the consumer reports within 120 days after the transfer was credited or debited to the consumer’s government benefit account.” https://files.consumerfinance.gov/f/documents/cfpb_prepaid_government-benefit-accounts_2018-amendments.pdf.

134. The statute uses the term “error resolution” to refer to these procedures, and states that “an unauthorized electronic funds transfer” is one “act[] constituting error” that gives rise to required error resolution procedures. *See* 15 U.S.C. § 1693f(f).

135. Specifically, when a consumer provides oral or written notice of an unauthorized charge on their account, a financial institution must “investigate the alleged [unauthorized charge], determine whether an [unauthorized charge] 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).

136. “If the financial institution determines after its investigation . . . that an [unauthorized charge] did not occur, it shall deliver or mail to the consumer an explanation of its findings within 3 business days after the conclusion of its investigation, and upon request of the consumer promptly deliver or mail to the consumer reproductions of all documents which the financial institution relied on to conclude that such [charge] did not occur.” 15 U.S.C. § 1693f(d).

137. EFTA provides for broad civil liability, including actual and statutory damages of up to \$1,000, for “any person who fails to comply with any provision of [EFTA] with respect to any consumer.” 15 U.S.C. § 1693m(a).

138. EFTA additionally provides for treble damages for failure to appropriately resolve errors on a consumer’s account, specifically, where the financial institution: (a) “did not make a good faith investigation of the alleged error;” (b) “did not have a reasonable basis for believing that the consumer’s account was not in error; or” (c) “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 CAUSE OF ACTION
Violation of the Electronic Funds Transfer Act (“EFTA”) - Unauthorized Transfer
15 U.S.C. §§ 1693g(a), 1693m(a); 12 C.F.R. § 1005.6(b)(1)
Against All Defendants

139. For any unauthorized electronic fund transfer that is not based on a lost or stolen access device that is reported by a consumer within 120 days of the transfer itself, EFTA limits a consumer’s liability to \$0. 12 C.F.R. §§ 1005.6(b)(3), 1005.15(e)(3)(ii).

140. EFTA provides that “[i]n any action which involves a consumer’s liability for an unauthorized electronic fund transfer, the burden of proof is upon the financial institution to show that the electronic fund transfer was authorized.” 15 U.S.C. § 1693g(b).

141. Ms. Chapple reported the April 12 Withdrawals to Direct Express on the same day those transfers occurred.

142. Defendants did not meet their burden of proof to prove that the April 12 Withdrawals were, in fact, authorized by Ms. Chapple.

143. Defendants violated EFTA because they did not limit Ms. Chapple’s liability to \$0.

144. As a direct and proximate result of this violation of EFTA, Ms. Chapple has suffered compensable harm and is entitled to recover actual and statutory damages, as well as costs and attorneys’ fees. 15 U.S.C. § 1693m(a).

145. In the alternative, for any unauthorized electronic fund transfer based on a lost or stolen access device that is reported by a consumer to a financial institution within two business days of the consumer’s discovery of the transfer, EFTA limits a consumer’s liability to no more than \$50. 15 U.S.C. § 1693g(a), 12 C.F.R. § 1005.6(b)(1).

146. Thus, even if Ms. Chapple's access device was considered to be "lost or stolen" within the meaning of EFTA, Defendants violated EFTA because they did not limit Ms. Chapple's liability to \$50.

147. As a direct and proximate result of this violation of EFTA, Ms. Chapple has suffered compensable harm and is entitled to recover actual and statutory damages, as well as costs and attorneys' fees. 15 U.S.C. § 1693m(a).

SECOND CAUSE OF ACTION
Violation of the Electronic Funds Transfer Act ("EFTA") - Error Resolution
15 U.S.C. §§ 1693f(a), 1693f(f), 1693m(a)
Against All Defendants

148. Defendants violated EFTA, § 1693f(f), because they:

- a. they did not "investigate" the alleged unauthorized charges on Ms. Chapple's account and "determine whether" these charges "ha[d] occurred." 15 U.S.C. § 1693f(a);
- b. "did not make a good faith investigation of the" fraud reported by Ms. Chapple, 15 U.S.C. § 1693f(e)(1);
- c. "did not have a reasonable basis for believing that" the unauthorized charges on Ms. Chapple's account were "not in error," *id.*; and/or
- d. "knowingly and willfully concluded that [Ms. Chapple's] account was not in error when such conclusion could not reasonably have been drawn from the evidence available . . . at the time of . . . investigation," 15 U.S.C. § 1693f(e)(2).

149. As a direct and proximate result of this violation of EFTA, Ms. Chapple has suffered compensable harm and is entitled to recover treble, actual and statutory damages, as well as costs and attorneys' fees. 15 U.S.C. §§ 1693f(e), 1693m(a).

THIRD CAUSE OF ACTION
Breach of Contract
Against Defendant Comerica

150. The Terms of Use⁹ are a contract between Ms. Chapple and Comerica.

⁹ Available at <https://www.consumerfinance.gov/data-research/prepaid-accounts/search-agreements/detail/48493/>.

151. The Terms of Use state: “If you are a New York resident, your liability for the unauthorized use of the Card will not exceed \$50.”

152. The Terms of Use also state: “if the written Transaction history or other Card Transaction information provided to you shows transfers that you did not make, tell us at once. If you do not tell us within 120 days after the transfer allegedly in error was credited or debited to your Card Account, you may not get back any money you lost after the 120 days, if we can prove that we could have stopped someone from taking the money if you had told us in time.”

153. The Terms of Use also state: “Tell us AT ONCE if you believe your Card or PIN has been lost or stolen. . . . If you tell us within two Business Days, you can lose no more than \$50 if someone used your Card or PIN without your permission.”

154. Comerica violated the Terms of Use because it did not limit Ms. Chapple’s liability to \$0 or, in the alternative, to \$50.

155. As a direct and proximate result of this violation, Ms. Chapple has suffered compensable harm and is entitled to recover actual damages.

FOURTH CAUSE OF ACTION
Violation of the Due Process Clause
Against All Defendants

156. The Due Process Clause of the Fifth Amendment prohibits the government from depriving any person “of life, liberty, or property, without due process of law.”

157. Defendant United States Department of the Treasury requires that SSI beneficiaries have either a checking account or a Direct Express card, and generally will not issue paper checks instead.

158. Defendant United States Department of the Treasury holds out the Direct Express card as “very safe.”

159. For purposes of the actions alleged herein, Defendants Comerica Bank and Conduent are state actors and acted under color of law because they are engaged in a joint undertaking with the Department of the Treasury to administer SSI benefits and are performing a traditionally governmental function.

160. Ms. Chapple has a constitutionally protected property interest in her SSI benefits.

161. Defendants required Ms. Chapple to receive her SSI benefits on a Direct Express card.

162. Defendants violated Ms. Chapple's right to due process under the Fifth Amendment to the U.S. Constitution by denying her claim without meaningful investigation, and thereby denying her access to her SSI benefits without an opportunity to appeal.

163. Additionally, Defendant United States Department of the Treasury violated Ms. Chapple's right to due process under the Fifth Amendment to the U.S. Constitution by contracting with Comerica Bank to administer the Direct Express program, despite clear and ample evidence of Comerica Bank's failure to administer the program in accordance with applicable federal law and without adequate protections for SSI recipients, such that SSI recipients such as Ms. Chapple would inevitably lose their benefits without an appropriate process to challenge the loss.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs requests that this Court enter judgment as follows:

1. Awarding Plaintiff:
 - a. actual damages pursuant to 15 U.S.C. § 1693m(a)(1) and the common law;

- b. statutory damages in the amount of \$1,000, pursuant to 15 U.S.C. § 1693m(a)(2)(A);
 - c. treble damages pursuant to 15 U.S.C. § 1693f(e);
 - d. costs and attorneys' fees;
2. Declaring that Defendants violated Plaintiff's right to due process under the Fifth Amendment of the U.S. Constitution;
3. Permanently enjoining Defendants to reverse their determination that Plaintiff's transfers were authorized and requiring them to re-credit her account in the amount of the unauthorized transfers.
4. Other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues triable by a jury.

Dated: September 3, 2021
New York, New York

Respectfully submitted,

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By:

A handwritten signature in black ink, appearing to read "E. Jois", is written over a light gray rectangular background.

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