

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

706 2015

PLAINTIFFS

Peter John Viamonte

DEFENDANTS

Chase Bank USA, N.A., et al

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Fishman & Mallon, LLP
305 Broadway, Suite 900, New York, NY 10007
(212) 822-1474 consumer.esq@outlook.com

ATTORNEYS (IF KNOWN)

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)
(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq. Defendants failed to reasonably investigate identity theft victim's disputes.

Has this action, case, or proceeding, or one essentially the same been previously filed in SDNY at any time? No Yes Judge Previously Assigned

If yes, was this case Vol. Invol. Dismissed. No Yes If yes, give date _____ & Case No. _____

IS THIS AN INTERNATIONAL ARBITRATION CASE? No Yes

(PLACE AN [x] IN ONE BOX ONLY)

NATURE OF SUIT

TORTS		ACTIONS UNDER STATUTES			
CONTRACT	PERSONAL INJURY	PERSONAL INJURY	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
[] 110 INSURANCE	[] 310 AIRPLANE	[] 367 HEALTHCARE/	[] 625 DRUG RELATED	[] 422 APPEAL	[] 375 FALSE CLAIMS
[] 120 MARINE	[] 315 AIRPLANE PRODUCT	PHARMACEUTICAL PERSONAL	SEIZURE OF PROPERTY	28 USC 158	[] 400 STATE
[] 130 MILLER ACT	LIABILITY	INJURY/PRODUCT LIABILITY	21 USC 881	[] 423 WITHDRAWAL	REAPPORTIONMENT
[] 140 NEGOTIABLE	[] 320 ASSAULT, LIBEL &	[] 365 PERSONAL INJURY	[] 690 OTHER	28 USC 157	[] 410 ANTITRUST
INSTRUMENT	SLANDER	PRODUCT LIABILITY			[] 430 BANKS & BANKING
[] 150 RECOVERY OF	[] 330 FEDERAL	[] 368 ASBESTOS PERSONAL			[] 450 COMMERCE
OVERPAYMENT &	EMPLOYERS'	INJURY PRODUCT			[] 460 DEPORTATION
ENFORCEMENT	LIABILITY	LIABILITY			[] 470 RACKETEER INFLU-
OF JUDGMENT	[] 340 MARINE			PROPERTY RIGHTS	ENCED & CORRUPT
[] 151 MEDICARE ACT	[] 345 MARINE PRODUCT	PERSONAL PROPERTY		[] 820 COPYRIGHTS	ORGANIZATION ACT
[] 152 RECOVERY OF	LIABILITY	[] 370 OTHER FRAUD		[] 830 PATENT	(RICO)
DEFAULTED	[] 350 MOTOR VEHICLE	[] 371 TRUTH IN LENDING		[] 840 TRADEMARK	[x] 480 CONSUMER CREDIT
STUDENT LOANS	[] 355 MOTOR VEHICLE				[] 490 CABLE/SATELLITE TV
(EXCL VETERANS)	PRODUCT LIABILITY			SOCIAL SECURITY	
[] 153 RECOVERY OF	[] 360 OTHER PERSONAL	[] 380 OTHER PERSONAL	LABOR	[] 861 HIA (1395ff)	[] 850 SECURITIES/
OVERPAYMENT	INJURY	PROPERTY DAMAGE	[] 710 FAIR LABOR	[] 862 BLACK LUNG (923)	COMMODITIES/
OF VETERAN'S	[] 362 PERSONAL INJURY -	[] 385 PROPERTY DAMAGE	STANDARDS ACT	[] 863 DIWC/DIWW (405(g))	EXCHANGE
BENEFITS	MED MALPRACTICE	PRODUCT LIABILITY	[] 720 LABOR/MGMT	[] 864 SSID TITLE XVI	
[] 160 STOCKHOLDERS			RELATIONS	[] 865 RSI (405(g))	[] 890 OTHER STATUTORY
SUITS			[] 740 RAILWAY LABOR ACT		ACTIONS
[] 190 OTHER		PRISONER PETITIONS	[] 751 FAMILY MEDICAL		[] 891 AGRICULTURAL ACTS
CONTRACT		[] 463 ALIEN DETAINEE	LEAVE ACT (FMLA)	FEDERAL TAX SUITS	
CONTRACT	ACTIONS UNDER STATUTES	[] 510 MOTIONS TO		[] 870 TAXES (U.S. Plaintiff or	[] 893 ENVIRONMENTAL
PRODUCT	CIVIL RIGHTS	VACATE SENTENCE	[] 790 OTHER LABOR	Defendant)	MATTERS
LIABILITY	[] 440 OTHER CIVIL RIGHTS	28 USC 2255	LITIGATION	[] 871 IRS-THIRD PARTY	[] 895 FREEDOM OF
[] 196 FRANCHISE	(Non-Prisoner)	[] 530 HABEAS CORPUS	[] 791 EMPL RET INC	26 USC 7609	INFORMATION ACT
	[] 441 VOTING	[] 535 DEATH PENALTY	SECURITY ACT		[] 896 ARBITRATION
REAL PROPERTY	[] 442 EMPLOYMENT	[] 540 MANDAMUS & OTHER			[] 899 ADMINISTRATIVE
[] 210 LAND	[] 443 HOUSING/		IMMIGRATION		PROCEDURE ACT/REVIEW OR
CONDEMNATION	ACCOMMODATIONS	[] 550 CIVIL RIGHTS	[] 462 NATURALIZATION		APPEAL OF AGENCY DECISION
[] 220 FORECLOSURE	[] 445 AMERICANS WTH	[] 555 PRISON CONDITION	APPLICATION		[] 950 CONSTITUTIONALITY OF
[] 230 RENT LEASE &	DISABILITIES -	[] 560 CIVIL DETAINEE	[] 465 OTHER IMMIGRATION		STATE STATUTES
EJECTMENT	EMPLOYMENT	CONDITIONS OF CONFINEMENT	ACTIONS		
[] 240 TORTS TO LAND	[] 446 AMERICANS WTH				
[] 245 TORT PRODUCT	DISABILITIES -OTHER				
LIABILITY	[] 448 EDUCATION				
[] 290 ALL OTHER					
REAL PROPERTY					

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:

DEMAND \$ _____ OTHER _____ JUDGE _____ DOCKET NUMBER _____

Check YES only if demanded in complaint

JURY DEMAND: YES NO

NOTE: You must also submit at the time of filing the Statement of Relatedness form (Form IH-32).

(PLACE AN X IN ONE BOX ONLY)

ORIGIN

- 1 Original Proceeding
- 2 Removed from State Court
 - a. all parties represented
 - b. At least one party is pro se.
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from (Specify District)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judge Judgment

(PLACE AN X IN ONE BOX ONLY)

BASIS OF JURISDICTION

IF DIVERSITY, INDICATE CITIZENSHIP BELOW.

- 1 U.S. PLAINTIFF
- 2 U.S. DEFENDANT
- 3 FEDERAL QUESTION (U.S. NOT A PARTY)
- 4 DIVERSITY

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

	PTF	DEF		PTF	DEF		PTF	DEF
CITIZEN OF THIS STATE	[]	[]	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	[]	[]	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	[]	[]
CITIZEN OF ANOTHER STATE	[]	[]	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[]	[]	FOREIGN NATION	[]	[]

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: WHITE PLAINS MANHATTAN
(DO NOT check either box if this a PRISONER PETITION/PRISONER CIVIL RIGHTS COMPLAINT.)

DATE 4/6/2015 SIGNATURE OF ATTORNEY OF RECORD

ADMITTED TO PRACTICE IN THIS DISTRICT

[] NO
[x] YES (DATE ADMITTED Mo. 05 Yr. 2004)
Attorney Bar Code # kcm4798

RECEIPT #

Magistrate Judge is to be designated by the Clerk of the Court **MAG. JUDGE K. FOX** is so Designated.

Ruby J. Krajick, Clerk of Court by _____ Deputy Clerk, DATED _____

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

Clear Form

Save

Print

JUDGE NATHAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

15 CV 02669

PETER JOHN VIAMONTE,

COMPLAINT

Plaintiff,

-against-

CHASE BANK USA, N.A. ,
CAPITAL ONE BANK (USA), N.A.,
MIDLAND FUNDING LLC,
EXPERIAN INFORMATION SOLUTIONS, INC.,
EQUIFAX INFORMATION SERVICES LLC, and
TRANS UNION LLC,

Defendants.

FILED
U.S. DISTRICT COURT
2015 APR -6 PM 3:52
S.D. OF N.Y.

-----X

The plaintiff **PETER JOHN VIAMONTE**, by his attorneys Fishman & Mallon, LLP, as and for his complaint against the defendants **CHASE BANK USA, N.A.** (“Chase”), **CAPITAL ONE BANK (USA), N.A.** (“Capital One”), **MIDLAND FUNDING LLC** (“Midland Funding”), **EXPERIAN INFORMATION SOLUTIONS, INC.** (“Experian”), **EQUIFAX INFORMATION SERVICES LLC** (“Equifax”), and **TRANS UNION LLC** (“Trans Union”) alleges as follows, upon information and belief:

PRELIMINARY STATEMENT

1. This is an action for actual, statutory, and punitive damages and statutory attorney’s fees brought pursuant to 15 U.S.C. § 1681 *et seq.* (“Fair Credit Reporting Act” or “FCRA”), New York General Business Law § 380 *et seq.* (the “New York Fair Credit Reporting Act” or “NY FCRA”), and 15 U.S.C. § 1692, *et seq.* (“Fair Debt Collections Practices Act” or “FDCPA”).
2. The plaintiff was a victim of identity theft and multiple fraudulent credit accounts were opened in his name, charges were incurred and not paid, and the negative information of the

unpaid accounts appeared on his credit reports. Plaintiff disputed the reporting of these fraudulently opened accounts to the credit reporting agencies on multiple occasions to no avail. The banks and debt collector defendants verified the accounts to the credit reporting agencies, which continued to report the accounts. The presence of the negative information on plaintiff's credit reports prevented him from obtaining credit, including credit cards and automobile loans.

JURISDICTION AND VENUE

3. The jurisdiction of this Court is conferred by 15 U.S.C. § 1681(p). This Court has diversity jurisdiction over the state law claims under 28 U.S.C. § 1332 as well as supplemental jurisdiction of those state law claims asserted herein under 28 U.S.C. § 1367(a). Venue is properly laid pursuant to 28 U.S.C. § 1391(b).

PARTIES

4. The plaintiff is an individual residing in the Bronx, NY and is a "consumer" within the meaning of the FCRA [15 U.S.C. § 1681a(c)].

5. Defendant Chase Bank USA, National Association, is a bank headquartered in Wilmington, Delaware.

6. Defendant Capital One Bank (USA), National Association, is a bank headquartered in Glen Allen, Virginia.

7. Defendant Midland Funding LLC is a Delaware corporation, duly authorized and qualified to do business in the State of New York, and a "debt collector" within the meaning of the Fair Debt Collection Practices Act [15 U.S.C. § 1692a(6)].

8. Defendant Experian Information Solutions, Inc. is an Ohio corporation, duly authorized and qualified to do business in the State of New York. Experian is a "consumer reporting agency" within the meaning of the FCRA [15 U.S.C. § 1681a(f)] and the NY FCRA [NY GBL

§ 380-a(e)].

9. Defendant Equifax Information Services LLC is a Georgia corporation, duly authorized and qualified to do business in the State of New York. Equifax is a “consumer reporting agency” within the meaning of the FCRA [15 U.S.C. § 1681a(f)] and the NY FCRA [NY GBL § 380-a(e)].

10. Defendant Trans Union LLC is a Delaware corporation, duly authorized and qualified to do business in the State of New York and a “consumer reporting agency” within the meaning of the FCRA [15 U.S.C. § 1681a(f)] and the NY FCRA [NY GBL § 380-a(e)].

FACTUAL BACKGROUND

11. The plaintiff is a victim of identity theft. The plaintiff’s personal identification information has repeatedly been used by third parties to open a variety of credit card accounts over the past several years.

12. From 2006 to 2008, identity thieves applied for and received credit card accounts with the plaintiff’s identifying information, albeit with his last name misspelled as “Viamontie.” Plaintiff, who was 19 when the first of these accounts was opened, did not have any credit accounts before the identity thieves opened these accounts.

13. Due to the accounts being opened with the name “Viamontie,” all three credit reporting agency defendants have been issuing credit reports on the plaintiff with the misspelled name.

14. Among the accounts opened by identity thieves were a credit card with Capital One and two credit cards with Chase. Plaintiff never authorized or utilized the subject credit accounts. The identity thieves failed to make payments for the charges incurred on the subject accounts. Chase charged off the accounts and assigned the debt for one of the accounts to Midland Funding, a debt collector.

15. The negative credit history provided by Capital One, Chase, and Midland Funding was reported by the defendants Experian, Equifax, and Trans Union on plaintiff's credit reports.

16. Throughout 2014, plaintiff applied for credit including credit cards and automobile loans. In determining the plaintiff's creditworthiness, the credit grantors to whom plaintiff applied considered credit reports published by the credit reporting agency defendants. These credit reports included negative credit information from accounts that were fraudulently opened by the identity thieves. Plaintiff's applications for credit were denied, and the inaccurate derogatory information on the plaintiff's credit reports was, at the minimum, at a substantial factor in those credit denials.

17. In April 2014, the plaintiff disputed fraudulent accounts appearing on his credit reports with Trans Union. The plaintiff disputed two inaccurate Chase accounts, the Midland Funding collections trade line, and a collections trade line placed by Portfolio Recovery Associates, L.L.C.

18. In May 2014, Trans Union sent dispute investigation results to the plaintiff. Trans Union deleted one of the fraudulently opened Chase accounts from plaintiff's credit report, but continued to report Midland Funding's collections trade line for the exact same Chase account. Even though it was opened by identity thieves, Chase verified that the other Chase account belonged to the plaintiff and Trans Union continued to report it.

19. Trans Union also continued to report inaccurate personal information, such as a misspelled version of plaintiff's last name and a post office box that the plaintiff never opened or used.

20. In September 2014, the plaintiff disputed a fraudulent Chase account with Equifax.

21. In October 2014, Equifax sent dispute investigation results to the plaintiff. Chase verified

that the account belonged to plaintiff, even though an identity thief opened it, and Equifax continued to report the fraudulent Chase account.

22. Equifax also continued to report inaccurate personal information, such as a misspelled version of plaintiff's last name and a post office box that the plaintiff never opened or used.

23. In October 2014, the plaintiff disputed fraudulent accounts appearing on his Experian credit report. He disputed two fraudulent Chase accounts and the fraudulent Capital One account with Experian.

24. Capital One and Chase verified that the fraudulent accounts belonged to the plaintiff, even though they were opened by an identity thief. Experian sent dispute results to the plaintiff in December 2014, and continued to report the unauthorized, fraudulent Capital One and Chase accounts on plaintiff's credit report.

25. Experian also continued to report inaccurate personal information, such as a misspelled version of plaintiff's last name and a post office box that the plaintiff never opened or used.

26. In late November 2014 the plaintiff once again disputed the fraudulent Capital One and Chase accounts to Experian. On December 15, 2014 Experian informed the plaintiff that it was refusing to investigate his dispute because it had already investigated those accounts and thus deemed his dispute frivolous.

27. After the credit reporting agency defendants verified and continued to report the fraudulently opened accounts, the plaintiff applied for credit several more times, including, but not limited to, credit cards and automobile loans. The credit grantors to whom plaintiff applied saw his credit reports, which contained the fraudulent, negative accounts opened by identity thieves and reported to the credit reporting agency defendants by Chase, Capital One, and Midland Funding. Plaintiff's applications for credit were denied and the inaccurate derogatory

information on the plaintiff's credit reports was, at the minimum, at a substantial factor in those credit denials.

28. As a direct and proximate result of the defendants' actions, conduct, and omissions, the plaintiff suffered actual damage including, but not limited to, denial of credit, damage to his reputation, emotional distress, aggravation, and frustration.

AS AND FOR A FIRST CAUSE OF ACTION
VIOLATION OF THE FCRA
AGAINST ALL DEFENDANTS

29. The plaintiff repeats and realleges each and every allegation set forth above as if reasserted and realleged herein.

30. Experian, Equifax, and Trans Union prepared, compiled, issued, assembled, transferred, published, and otherwise reproduced numerous consumer reports regarding the plaintiff, as that term is defined in 15 U.S.C. § 1681a(d).

31. Such reports falsely stated that the plaintiff had opened accounts with Chase and Capital One and failed to pay charges incurred on those accounts. Experian, Equifax, and Trans Union knew, or should have known, that the reports contained erroneous information.

32. Experian, Equifax, and Trans Union willfully (or, in the alternative, negligently) failed to maintain and/or follow reasonable procedures to assure maximum possible accuracy of the information it reported to one or more third parties pertaining to the plaintiffs or in credit reports supplied to third parties, in violation of 15 U.S.C. § 1681e(b).

33. Experian, Equifax, and Trans Union willfully (or, in the alternative, negligently) violated 15 U.S.C. § 1681i by failing to conduct a reasonable reinvestigation of the plaintiff's disputes of fraudulently opened Chase, Capital One, and Midland Funding accounts and failing to consider all relevant information regarding the dispute provided by the plaintiff.

34. Defendants Experian, Equifax, and Trans Union willfully (or, in the alternative, negligently) failed to review and consider all relevant information submitted by the plaintiff regarding his dispute in violation of 15 U.S.C. § 1681i(a)(4).

35. Defendants Experian, Equifax, and Trans Union willfully (or, in the alternative, negligently) violated 15 U.S.C. § 1681i(a)(5) by failing to delete or modify the disputed derogatory information from the plaintiff's file after failing to verify the completeness and accuracy of that information.

36. Defendants Capital One, Chase, and Midland Funding willfully (or, in the alternative, negligently) violated 15 U.S.C. § 1681s-2(b) by failing to conduct reasonable investigations of the plaintiff's disputes and by failing to review all relevant information regarding the dispute.

37. Defendants Chase, Capital One and Midland Funding each failed to review all relevant information regarding the dispute while conducting its investigation in violation of 15 U.S.C. § 1681s-2(b)(1)(B).

38. Experian, Equifax, and Trans Union each published credit reports regarding the plaintiff on multiple occasions containing negative and inaccurate information after the plaintiff disputed the information. The inaccurate reports caused the plaintiff economic harm via credit denials, limiting his opportunities for credit, damaging his reputation, and causing him emotional distress.

39. Defendants are thus liable to the plaintiff for actual and punitive damages in an amount to be determined by the trier of fact, as well as the plaintiff's reasonable attorney's fees pursuant to 15 U.S.C. §§ 1681n and 1681o.

AS AND FOR A SECOND CAUSE OF ACTION
VIOLATION OF THE NY FCRA
AGAINST EXPERIAN, EQUIFAX, AND TRANS UNION

40. Defendants Experian, Equifax, and Trans Union prepared, compiled, issued, assembled, transferred, published, and otherwise reproduced numerous consumer reports regarding the plaintiff, as that term is defined in NY GBL § 380-a(c)(2).

41. Such reports erroneously contained fraudulent, delinquent accounts that did not belong to the plaintiff. Defendants knew, or should have known, that the reports contained erroneous information in violation of NY GBL § 380-j(a)(3).

42. Defendants Experian, Equifax, and Trans Union willfully (or, in the alternative, negligently) failed to maintain reasonable procedures designed to assure maximum possible accuracy of their reports, in violation of NY GBL 380-j(e).

43. Defendants Experian, Equifax, and Trans Union willfully (or, in the alternative, negligently) violated NY GBL § 380-f by failing to conduct a reasonable reinvestigation of the plaintiff's disputes of the delinquent accounts.

44. Defendants Experian, Equifax, and Trans Union published credit reports regarding the plaintiff on multiple occasions which erroneously contained fraudulent and delinquent accounts that did not belong to the plaintiff, causing the plaintiff economic harm via credit denials, limiting his opportunities for credit, and damaging his reputation and causing him emotional distress.

45. Defendants Experian, Equifax, and Trans Union are thus liable to the plaintiff for actual and punitive damages in an amount to be determined by the trier of fact, as well as the plaintiff's reasonable attorney's fees pursuant to NY GBL §§ 380-l and 380-m.

AS AND FOR A THIRD CAUSE OF ACTION
VIOLATION OF THE FDCPA
AGAINST MIDLAND FUNDING

46. The plaintiff repeats and realleges each and every allegation set forth above as if reasserted and realleged herein.

47. The plaintiff is a “consumer” as that term is used in 15 U.S.C. § 1692a(3).

48. Defendant Midland Funding is a “debt collector” within the meaning of 15 U.S.C. § 1692a(6).

49. The alleged debt underlying the plaintiff’s complaint is a “debt” within the meaning of 15 U.S.C. § 1692a(5).

50. Defendant Midland Funding violated 15 U.S.C. §§ 1692f and 1692(f)(1) by repeatedly attempting to collect a debt from the plaintiff which he did not owe and by falsely reporting to credit reporting agencies that plaintiff owed a debt which he did not owe.

51. Defendant Midland Funding violated 15 U.S.C. § 1692e(2)(a) by repeatedly attempting to collect a debt from the plaintiff which he did not owe and by falsely reporting to credit reporting agencies that plaintiff owed a debt which he did not owe.

52. Defendant Midland Funding violated 15 U.S.C. § 1692e(8) by reporting information which it knew or should have known to be false to credit reporting agencies.

53. Defendant Midland Funding violated 15 U.S.C. § 1692e(10) by falsely reporting to credit reporting agencies that plaintiff owed a debt that he did not owe.

54. As a result of defendant’s unlawful conduct the plaintiff suffered economic and emotional distress damages.

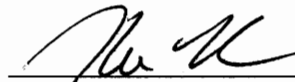
55. Defendant Midland Funding is thus liable to the plaintiff for statutory and actual damages in an amount to be determined by the trier of fact, as well as the plaintiff’s reasonable attorney’s

fees and pursuant to 15 U.S.C. § 1692k.

**THE PLAINTIFF DEMANDS A JURY TRIAL ON ALL CAUSES OF ACTION
ASSERTED HEREIN.**

Respectfully submitted,

Dated: April 6, 2015



Kevin C. Mallon
FISHMAN & MALLON, LLP
305 Broadway, Suite 900
New York, NY 10007
(212) 822-1474
Attorneys for the Plaintiff