

APR 30, 2018 01:47 PM

Angie T. Davis
Angie T. Davis, Clerk of State Court
Cobb County, Georgia

**IN THE STATE COURT OF COBB COUNTY
STATE OF GEORGIA**

EDWARD G. RAY, JR. and,)
YVONNE M. RAY,)
)
PLAINTIFFS,)
)
VS.)
)
IBM SOUTHEASTERN EMPLOYEES’)
CREDIT UNION, *et al.*)
)
DEFENDANTS.)

CIVIL ACTION

FILE NO. 18-A-240

**DEFENDANT IBM SOUTHEASTERN EMPLOYEES’ CREDIT UNION’S
ANSWERS AND AFFIRMATIVE DEFENSES**

Defendant IBM Southeastern Employees’ Credit Union (“IBMSECU”), by and through its undersigned counsel, answers Plaintiffs Edward G. Ray, Jr. and Yvonne M. Ray’s (collectively “Plaintiffs”) Complaint as follows:

AFFIRMATIVE AND OTHER DEFENSES

Each of the defenses set forth herein is stated as a separate and distinct defense, in the alternative to, and without waiving, any of the other defenses which are herein or which may hereafter be pleaded. IBMSECU reserves the right to raise such additional affirmative and other defenses as may be established during discovery and by the evidence in this case. IBMSECU asserts the following specific defenses:

FIRST DEFENSE

Plaintiffs’ Complaint fails to state a claim against IBMSECU upon which relief can be granted.

SECOND DEFENSE

Lack of joinder of one or more indispensable parties who should and must be joined, and without joinder of these proper parties, complete relief cannot be afforded among those already attempted to be made parties to this civil action.

THIRD DEFENSE

Any injuries or damages that Plaintiffs may have sustained, as alleged in Plaintiffs' Complaint, to the extent not caused by the negligence and fault of Plaintiffs, were proximately caused by the negligence, fault, or actions of persons or entities other than IBMSECU, over whom IBMSECU had no control, and for whose negligence, fault, and actions IBMSECU is not responsible.

FOURTH DEFENSE

The injuries alleged by Plaintiffs herein are or may be due to an assumption of the risk, thereby barring recovery from IBMSECU.

FIFTH DEFENSE

The injuries alleged by Plaintiffs are or may be due to Plaintiffs' contributory negligence and/or comparative negligence, thereby barring recovery from IBMSECU.

SIXTH DEFENSE

The alleged injuries and damages complained of by Plaintiffs were caused by new, independent, and efficient intervening causes and were not caused by any negligence or conduct on the part of IBMSECU.

SEVENTH DEFENSE

There is no concert of action between IBMSECU and any other named Defendants. Defendants are not joint tortfeasors and, accordingly, IBMSECU may not be held jointly and severally liable with the other named Defendants.

EIGHTH DEFENSE

To the extent that Plaintiffs have received payment from any alleged joint tortfeasor in full satisfaction of any of his alleged injuries and/or claims against IBMSECU and/or any other alleged joint tortfeasor, Plaintiffs' Complaint in each and every count and cause of action alleged therein is barred by the defenses of payment and accord and satisfaction.

NINTH DEFENSE

Plaintiffs' claims may be barred, in whole or in part, by the doctrines of waiver or estoppel.

TENTH DEFENSE

Plaintiffs' Complaint is or may be barred by the doctrine of laches.

ELEVENTH DEFENSE

If Plaintiffs have heretofore or should hereafter settle for any of the alleged injuries and damages with any parties, then IBMSECU is entitled to a credit or judgment offset in the amount of said settlements.

TWELFTH DEFENSE

Plaintiffs are barred from recovery because IBMSECU did not make any affirmation or representation of fact or represent a fact.

THIRTEENTH DEFENSE

Plaintiffs are barred from recovery because IBMSECU owed no duty to Plaintiffs.

FOURTEENTH DEFENSE

Plaintiffs are barred from recovery because IBMSECU had no fiduciary relationship with Plaintiffs.

FIFTEENTH DEFENSE

At all times and places mentioned in the Complaint, Plaintiffs failed to make reasonable efforts to mitigate injuries and damages, if any.

SIXTEENTH DEFENSE

Plaintiffs acknowledged, ratified, consented to, and acquiesced in the alleged acts or omissions, if any, of IBMSECU, thus barring Plaintiffs from any relief as prayed for in the Complaint.

SEVENTEENTH DEFENSE

Under the facts of this action, punitive damages are inappropriate and IBMSECU moves to dismiss such claims. Any imposition of punitive damages against IBMSECU would violate its constitutional rights, including, but not limited to, its rights under the Fifth and Fourteenth Amendments of the United States Constitution; the *ex post facto* and contracts clauses of Article 1, Section 10 of the United States Constitution; IBMSECU's right to be free of cruel and unusual punishment and excessive fines as guaranteed under the Eighth Amendment to the United States Constitution; and the parallel provisions of the Constitution of the State of Georgia or any other applicable state constitution. IBMSECU reserves the right to assert any additional constitutional defenses to the imposition of punitive damages against it as may be disclosed during the course of additional investigation and discovery.

EIGHTEENTH DEFENSE

Pursuant to O.C.G.A. § 51-12-33, IBMSECU will seek to attribute fault to parties and non-parties and to have the jury allocate such fault for purposes of apportioning damages, if any, among the defendants who remain at verdict in this case and other former parties or non-parties or other entities.

NINETEENTH DEFENSE

There is no causal connection between IBMSECU and any injury sustained by Plaintiffs, such causal connection being remote, indefinite, and speculative.

TWENTIETH DEFENSE

There is a lack or insufficiency of process upon IBMSECU and the case should be dismissed as to it.

TWENTY-FIRST DEFENSE

There is a lack or insufficiency of service of process upon IBMSECU and the case should be dismissed as to it.

TWENTY-SECOND DEFENSE

IBMSECU reserves the right to seek contribution and/or indemnity from those parties not joined in this action as a result of bankruptcy or otherwise.

TWENTY-THIRD DEFENSE

Plaintiffs have failed to provide timely notice of the alleged claims which now acts to bar the civil action.

TWENTY-FOURTH DEFENSE

There is a lack or insufficiency of service of process upon IBMSECU and the case should be dismissed as to it.

TWENTY-FIFTH DEFENSE

This action is barred, in whole or in part, by the doctrines of *res judicata* and collateral estoppel.

TWENTY-SIXTH DEFENSE

IBMSECU asserts all defenses available pursuant to O.C.G.A. §§ 9-11-8 and 9-11-12 which may be supported by any evidence in this action.

TWENTY-SEVENTH DEFENSE

This Court may lack subject matter jurisdiction over IBMSECU.

TWENTY-EIGHTH DEFENSE

To the extent Plaintiffs' Complaint asserts a demand for punitive damages, IBMSECU specifically incorporates by reference any and all standards of limitations regarding the determination and/or enforceability of punitive damage awards that arose in the decisions of *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003); *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 522 U.S. 424 (2001); and *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996).

TWENTY-NINTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, because any award to Plaintiffs in this action would constitute unjust enrichment.

THIRTIETH DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the doctrine of unclean hands.

THIRTY-FIRST DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the doctrine of equitable estoppel.

THIRTY-SECOND DEFENSE

Plaintiffs' claims are barred, in whole or in part, because they are subject to arbitration.

THIRTY-THIRD DEFENSE

IBMSECU has performed and discharged any and all obligations and legal duties arising out of the matters alleged in the Complaint, except those matters as to which performance had been excused.

THIRTY-FOURTH DEFENSE

IBMSECU acted in good faith in any and all interactions with Plaintiffs and did not directly or indirectly perform acts whatsoever which would constitute a violation of any rights of Plaintiffs or any duty, if any, owed to Plaintiffs.

THIRTY-FIFTH DEFENSE

IBMSECU incorporates by reference herein, as if fully set forth, all defenses, both affirmative and otherwise, raised, pleaded or asserted by all other answering Defendants.

THIRTY-SIXTH DEFENSE

Plaintiffs respond to the specific allegations contained in the enumerated paragraphs of the Complaint as follows:

STATEMENT OF JURISDICTION & VENUE

1. In response to paragraph 1 of the Complaint, IBMSECU admits Plaintiffs purport to be residents of the State of Georgia. IBMSECU further admits that Plaintiffs maintained bank accounts with IBMSECU, a credit union affiliated with IBM, in November 2016 through the filing of the Complaint. Except as specifically admitted, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 1 of the Complaint and, on that basis, denies the allegations contained therein.

2. In response to paragraph 2 of the Complaint, IBMSECU states that this paragraph contains legal conclusions which are not subject to admittance or denial. To the extent a response is required, IBMSECU admits that it is a credit union operating and conducting business in the State of Georgia. IBMSECU further admits that it operates branches in Georgia and Cobb County. IBMSECU admits that it may be served at 1000 NW 17th Avenue, Delray Beach, Florida. IBMSECU denies the remaining allegations asserted against it in paragraph 2 of the Complaint.

3. In response to paragraph 3 of the Complaint, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies the allegations contained therein.

4. In response to paragraph 4 of the Complaint, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies the allegations contained therein.

5. In response to paragraph 5 of the Complaint, IBMSECU states that this paragraph contains legal conclusions which are not subject to admission or denial. To the extent that a response is required, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding venue and, on that basis, denies them.

SUMMARY OF THE CLAIM

In response to the unnumbered paragraphs immediately following the words SUMMARY OF CLAIM, IBMSECU states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first paragraph regarding and, on that basis, denies them.

In response to the allegations contained in the second paragraph, IBMSECU states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding venue and, on that basis, denies them.

In response to the allegations contained in the third paragraph, IBMSECU states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the third paragraph regarding and, on that basis, denies, them.

In response to the allegations contained in the fourth paragraph, IBMSECU states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies each of the allegations in this paragraph that relate to other defendants.

In response to the allegations contained in the fifth paragraph, IBMSECU denies the allegations pertaining to IBMSECU. As to the remaining allegations in the fifth paragraph, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies the remaining allegations contained therein.

SUMMARY OF FACTS

6. In response to paragraph 6 of the Complaint, IBMSECU admits that Plaintiffs maintained bank accounts with IBMSECU, a credit union affiliated with IBM. As to the remaining allegations contained in this paragraph, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies the allegations contained therein.

7. In response to paragraph 7 of the Complaint, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies the allegations contained therein.

A. IBMSECU Invited Claimants Edward and Yvonne Ray to Attend a Meeting at its Kennesaw Bank Branch Office to Discuss Moving Their Retirement Nest Egg and Investing with CUNA Through IBMSECU Financial Planning and Investment Services.

8. In response to paragraph 8 of the Complaint, IBMSECU states that Exhibit 1 speaks for itself and, on that basis, denies any allegations of paragraph 8 inconsistent therewith. As to the remaining allegations in paragraph 8 of the Complaint, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies the remaining allegations contained therein.

9. In response to paragraph 9 of the Complaint, IBMSECU states that Exhibit 2 speaks for itself and, on that basis, denies any allegations of paragraph 9 inconsistent therewith.

10. In response to paragraph 10 of the Complaint, IBMSECU states that Exhibit 3 speaks for itself and, on that basis, denies any allegations of paragraph 10 inconsistent therewith.

B. Plaintiffs Met with Jamison and Parris at the IBMSECU Bank Branch and Were Convinced To Entrust Approximately \$330,000 of Their Retirement Nest Egg to CUNA and IBMSECU Financial Planning and Investment Services.

11. In response to paragraph 11 of the Complaint, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies the allegations contained therein.

12. In response to paragraph 12 of the Complaint, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies the allegations contained therein.

13. In response to paragraph 13 of the Complaint, IBMSECU states that Exhibit 4 speaks for itself and, on that basis, denies any allegations of paragraph 13 inconsistent therewith. As to the remaining allegations in paragraph 13, IBMSECU is without knowledge or information

sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies the allegations contained therein.

14. In response to paragraph 14 of the Complaint, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies the allegations contained therein.

15. In response to paragraph 15 of the Complaint, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies the allegations contained therein.

16. In response to paragraph 16 of the Complaint, IBMSECU expressly denies that it endorsed Parris. IBMSECU further states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained therein and, on that basis, denies the remaining allegations.

C. Unbeknownst to Plaintiffs, the November 18, 2016 Meeting at IBMSECU Was Nothing More Than The Beginning Of a Bold and Brash Theft Heist Perpetrated By Jamison and Parris To Steal All \$325,000 of Plaintiffs' Retirement Savings.

17. In response to paragraph 17 of the Complaint, IBMSECU states that Exhibit 5 speaks for itself and, on that basis, denies any allegations of paragraph 17 inconsistent therewith. As to the remaining allegations in paragraph 17, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies the allegations contained therein.

18. In response to paragraph 18 of the Complaint, IBMSECU denies the allegations contained therein that relate to IBMSECU. As to the remaining allegations in paragraph 18, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies the allegations contained therein.

- i. At the time of the November 18, 2016 meeting, Parris was not registered in any capacity to work in the securities industry and had been suspended indefinitely from the securities industry.**

19. In response to paragraph 19 of the Complaint, IBMSECU states that Exhibit 6 speaks for itself and, on that basis, denies any allegations of paragraph 19 inconsistent therewith.

20. In response to paragraph 20 of the Complaint, IBMSECU states that Exhibits 6, 7 and 8 speak for themselves and, on that basis, denies any allegations of paragraph 20 inconsistent therewith.

21. In response to paragraph 21 of the Complaint, IBMSECU denies that it gave Parris permission to participate in the meeting at IBMSECU.

- ii. Jamison was a former registered representative of First American Securities.**

22. In response to paragraph 22 of the Complaint, IBMSECU states that Jamison's FINRA BrokerCheck Report speaks for itself and, on that basis, denies any allegations inconsistent therewith.

- iii. Jamison conspired with Parris to violate the securities laws by, among other things, serving as President and CEO of Advisory Life and Consulting, LLC, a limited liability company owned by Parris that operated (and appears to be currently operating) as an unlicensed broker-dealer and investment advisory firm in Georgia.**

23. In response to paragraph 23 of the Complaint, IBMSECU states that Exhibit 9 speaks for itself and, on that basis, denies any allegations of paragraph 23 inconsistent therewith.

24. In response to paragraph 24 of the Complaint, IBMSECU states that Exhibit 9 speaks for itself and, on that basis, denies any allegations of paragraph 24 inconsistent therewith.

25. In response to paragraph 25 of the Complaint, IBMSECU states that Exhibit 10 speaks for itself and, on that basis, denies any allegations of paragraph 25 inconsistent therewith.

26. In response to paragraph 26 of the Complaint, IBMSECU states that Exhibit 3 speaks for itself and, on that basis, denies any allegations of paragraph 26 inconsistent therewith.

As to the remaining allegations in paragraph 26, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies the allegations contained therein.

27. In response to paragraph 27 of the Complaint, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies the allegations contained therein.

28. In response to paragraph 28 of the Complaint, IBMSECU states that Exhibit 11 speaks for itself and, on that basis, denies any allegations of paragraph 26 inconsistent therewith.

29. In response to paragraph 29 of the Complaint, IBMSECU states that Exhibit 12 speaks for itself and, on that basis, denies any allegations of paragraph 29 inconsistent therewith. As to the remaining allegations in paragraph 29, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies the allegations contained therein.

30. In response to paragraph 30 of the Complaint, IBMSECU states that Exhibit 13 speaks for itself and, on that basis, denies any allegations of paragraph 13 inconsistent therewith.

IBMSECU further denies that Exhibit 13 contains sufficient information by which IBMSECU could and should have linked Jamison to Parris.

As to the allegations of this paragraph that relate to other defendants, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies each of the allegations in this paragraph that relate to other defendants.

- iv. **Jamison and Parris did not transfer any of Claimants' money to CUNA and instead diverted most, if not all of it, to United RL Capital Services LLC, another Michigan limited liability company owned by Parris and/or Jamison.**

31. In response to paragraph 31 of the Complaint, IBMSECU states that Exhibits 14, 15, and 16 speak for themselves and, on that basis, denies any allegations of paragraph 31 inconsistent therewith.

32. In response to paragraph 32 of the Complaint, IBMSECU admits, upon information and belief, that Ms. Ray opened CUNA account number 6QB-XXX44. As to the remaining allegations contained in paragraph 32, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies each of the allegations contained therein.

33. In response to paragraph 33 of the Complaint, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies each of the allegations contained therein.

34. In response to paragraph 34 of the Complaint, IBMSECU states that Exhibit 17 speaks for itself and, on that basis, denies any allegations of paragraph 34 inconsistent therewith. As to the remaining allegations in paragraph 34, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies the allegations contained therein.

35. In response to paragraph 35 of the Complaint, IBMSECU states that Exhibit 18 speaks for itself and, on that basis, denies any allegations of paragraph 35 inconsistent therewith.

36. In response to paragraph 36 of the Complaint, IBMSECU states that Exhibits 19, 20, and 21 speak for themselves and, on that basis, denies any allegations of paragraph 36 inconsistent therewith.

37. In response to paragraph 37 of the Complaint, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies each of the allegations contained therein.

38. In response to paragraph 38 of the Complaint, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies each of the allegations contained therein.

39. In response to paragraph 39 of the Complaint, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies each of the allegations contained therein.

40. In response to paragraph 40 of the Complaint, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies each of the allegations contained therein.

41. In response to paragraph 41 of the Complaint, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies each of the allegations contained therein.

D. IBMSECU Knew or Should Have Known That Jamison Could or Should Not Be Trusted.

42. In response to paragraph 42 of the Complaint, IBMSECU denies that it knew or had reason to know that Jamison purportedly could or should not be trusted. As to the remaining allegations contained in paragraph 42, IBMSECU states that Exhibit 22 speaks for itself and, on that basis, denies any allegations of paragraph 42 inconsistent therewith.

43. In response to paragraph 43 of the Complaint, IBMSECU denies that even the most cursory review of Jamison's activities at Advisors Life would have alerted IBMSECU to the purported fact that Jamison was acting as an unlicensed investment adviser and broker-

dealer. As to the remaining allegations contained in paragraph 43, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies each of the allegations contained therein.

44. In response to paragraph 44 of the Complaint, IBMSECU states that Exhibits 22 and 23 speak for themselves, and, on that basis, denies any allegations of paragraph 44 inconsistent therewith. As to the remaining allegations contained in paragraph 44, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies each of the allegations contained therein.

ENUMERATED CLAIMS FOR RECOVERY

COUNT ONE:

BREACH OF FIDUCIARY DUTY AGAINST IBMSECU & JAMISON

45. In response to paragraph 45 of the Complaint, IBMSECU incorporates its response to paragraphs 1–44 as though fully set forth herein.

46. In response to paragraph 46 of the Complaint, IBMSECU states that this paragraph contains legal conclusions, which are not subject to admission or denial. To the extent that a response is required, IBMSECU denies that it has a fiduciary relationship with or duty to its members. IBMSECU further states that the quoted language speaks for itself and, on that basis, denies any allegations of paragraph 46 inconsistent therewith.

47. In response to paragraph 47 of the Complaint, IBMSECU states that it contains legal conclusions not subject to admittance or denial. To the extent a response is required, IBMSECU denies that it has a fiduciary relationship with Plaintiffs and denies that it has any corresponding duty to Plaintiffs arising out of a fiduciary relationship.

48. In response to paragraph 48 of the Complaint, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies each of the allegations contained therein.

49. In response to paragraph 49 of the Complaint, IBMSECU denies the allegations contained therein.

50. In response to paragraph 50 of the Complaint, IBMSECU denies the allegations contained therein.

51. In response to paragraph 51 of the Complaint, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies each of the allegations contained therein.

52. In response to paragraph 52 of the Complaint, IBMSECU denies the allegations contained therein that relate to IBMSECU. As to the allegations relating to other defendants, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies each of the allegations contained therein.

COUNT TWO:

**AIDING & ABETTING BREACHES OF
FIDUCIARY DUTY AGAINST IBMSECU**

53. In response to paragraph 53 of the Complaint, IBMSECU incorporates its response to paragraphs 1–52 as though fully set forth herein.

54. In response to paragraph 54 of the Complaint, IBMSECU denies the allegations contained therein.

55. In response to paragraph 55 of the Complaint, IBMSECU denies the allegations contained therein.

56. In response to paragraph 56 of the Complaint, IBMSECU denies the allegations contained therein.

57. In response to paragraph 57 of the Complaint, IBMSECU denies the allegations contained therein.

58. In response to paragraph 58 of the Complaint, IBMSECU denies the allegations contained therein.

59. In response to paragraph 59 of the Complaint, IBMSECU denies the allegations contained therein.

COUNT THREE:

NEGLIGENCE AGAINST IBMSECU, JAMISON and QUEST IRA, INC.

60. In response to paragraph 60 of the Complaint, IBMSECU incorporates its response to paragraphs 1–59 as though fully set forth herein.

61. In response to paragraph 61 of the Complaint, IBMSECU denies the allegations contained therein.

62. In response to paragraph 62 of the Complaint, IBMSECU denies the allegations contained therein.

63. In response to paragraph 63 of the Complaint, IBMSECU denies the allegations contained therein.

64. In response to paragraph 64 of the Complaint, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies each of the allegations contained therein.

65. In response to paragraph 65 of the Complaint, IBMSECU denies the allegations contained therein.

66. In response to paragraph 66 of the Complaint, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies each of the allegations contained therein.

67. In response to paragraph 67 of the Complaint, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies each of the allegations contained therein.

68. In response to paragraph 68 of the Complaint, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies each of the allegations contained therein.

69. In response to paragraph 69 of the Complaint, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies each of the allegations contained therein.

70. In response to paragraph 70 of the Complaint, IBMSECU denies each and every allegation contained therein that relates to IBMSECU. As to the allegations of this paragraph that relate to other defendants, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies each of the allegations in this paragraph that relate to other defendants.

COUNT THREE:¹

FRAUD AGAINST IBMSECU AND JAMISON

71. In response to paragraph 71 of the Complaint, IBMSECU incorporates its response to paragraphs 1–70 as though fully set forth herein.

¹ Plaintiffs' Complaint appears to have erroneously numbered both its Negligence and Fraud claims as Count Three. IBMSECU has adopted Plaintiffs' numbering system for ease of reference of the Court and the parties.

72. In response to paragraph 72 of the Complaint, IBMSECU denies the allegations contained therein.

73. In response to paragraph 73 of the Complaint, IBMSECU denies the allegations contained therein.

74. In response to paragraph 74 of the Complaint, IBMSECU denies the allegations contained therein.

75. In response to paragraph 75 of the Complaint, IBMSECU denies the allegations contained therein.

76. In response to paragraph 76 of the Complaint, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies each of the allegations contained therein.

77. In response to paragraph 77 of the Complaint, IBMSECU denies each and every allegation contained therein that relates to IBMSECU. As to the allegations of this paragraph that relate to other defendants, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies each of the allegations in this paragraph that relate to other defendants.

78. In response to paragraph 78 of the Complaint, IBMSECU denies each and every allegation contained therein that relates to IBMSECU. As to the allegations of this paragraph that relate to other defendants, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies each of the allegations in this paragraph that relate to other defendants.

79. In response to paragraph 79 of the Complaint, IBMSECU denies each and every allegation contained therein that relates to IBMSECU. As to the allegations of this paragraph

that relate to other defendants, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies each of the allegations in this paragraph that relate to other defendants.

80. In response to paragraph 80 of the Complaint, IBMSECU denies each and every allegation contained therein that relates to IBMSECU. As to the allegations of this paragraph that relate to other defendants, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies each of the allegations in this paragraph that relate to other defendants.

81. In response to paragraph 81 of the Complaint, IBMSECU denies each and every allegation contained therein that relates to IBMSECU. As to the allegations of this paragraph that relate to other defendants, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies each of the allegations in this paragraph that relate to other defendants.

COUNT FOUR:

AIDING & ABETTING FRAUD AGAINST IBMSECU

82. In response to paragraph 82 of the Complaint, IBMSECU incorporates its response to paragraphs 1–81 as though fully set forth herein.

83. In response to paragraph 83 of the Complaint, IBMSECU states that this paragraph contains legal conclusions which are not subject to admission or denial. To the extent that a response is required, IBMSECU denies the allegations contained therein.

84. In response to paragraph 84 of the Complaint, IBMSECU states that this paragraph contains legal conclusions which are not subject to admission or denial. To the extent that a response is required, IBMSECU denies the allegations contained therein.

85. In response to paragraph 85 of the Complaint, IBMSECU denies the allegations contained therein.

86. In response to paragraph 86 of the Complaint, IBMSECU denies the allegations contained therein.

COUNT FIVE:

VIOLATION OF THE GEORGIA SECURITIES ACT
AGAINST IBMSECU AND JAMISON

87. In response to paragraph 87 of the Complaint, IBMSECU incorporates its response to paragraphs 1–86 as though fully set forth herein.

88. In response to paragraph 88 of the Complaint, IBMSECU states that this paragraph contains legal conclusions which are not subject to admission or denial. To the extent that a response is required, IBMSECU admits that Plaintiffs purport to recite O.C.G.A. § 10-5-50.

89. In response to paragraph 89 of the Complaint, IBMSECU denies each and every allegation contained therein that relates to IBMSECU. As to the allegations of this paragraph that relate to other defendants, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies each of the allegations in this paragraph that relate to other defendants.

90. In response to paragraph 90 of the Complaint, IBMSECU denies each and every allegation contained therein that relates to IBMSECU. As to the allegations of this paragraph that relate to other defendants, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies each of the allegations in this paragraph that relate to other defendants.

91. In response to paragraph 91 of the Complaint, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies each of the allegations contained therein.

92. In response to paragraph 92 of the Complaint, IBMSECU denies each and every allegation contained therein that relates to IBMSECU. As to the allegations of this paragraph that relate to other defendants, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies each of the allegations in this paragraph that relate to other defendants.

COUNT SIX:

**VICARIOUS LIABILITY, RESPONDEAT SUPERIOR &
SECONDARY LIABILITY AGAINST IBMSECU**

93. In response to paragraph 93 of the Complaint, IBMSECU incorporates its response to paragraphs 1–92 as though fully set forth herein.

94. In response to paragraph 94 of the Complaint, IBMSECU denies the allegations contained therein.

95. In response to paragraph 95 of the Complaint, IBMSECU states that this paragraph contains legal conclusions which are not subject to admission or denial. To the extent that a response is required, IBMSECU denies the allegations contained therein.

96. In response to paragraph 96 of the Complaint, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies each of the allegations in this paragraph that relate to other defendants.

97. In response to paragraph 97 of the Complaint, IBMSECU states that the correspondence referenced therein speaks for itself and, on that basis, denies any allegations of paragraph 97 inconsistent therewith.

98. In response to paragraph 98 of the Complaint, IBMSECU states that the correspondence referenced therein speaks for itself and, on that basis, denies any allegations of paragraph 98 inconsistent therewith.

99. In response to paragraph 99 of the Complaint, IBMSECU states that this paragraph contains legal conclusions which are not subject to admission or denial. To the extent that a response is required, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies each of the allegations contained therein.

100. In response to paragraph 100 of the Complaint, IBMSECU denies the allegations contained therein.

101. In response to paragraph 101 of the Complaint, IBMSECU denies the allegations contained therein.

102. In response to paragraph 102 of the Complaint, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies each of the allegations contained therein.

103. In response to paragraph 103 of the Complaint, IBMSECU denies the allegations contained therein.

COUNT SEVEN:

**ATTORNEY'S FEES AGAINST IBMSECU,
JAMISON and QUEST IRA, INC.**

104. In response to paragraph 104 of the Complaint, IBMSECU incorporates its response to paragraphs 1–103 as though fully set forth herein.

105. In response to paragraph 105 of the Complaint, IBMSECU admits Plaintiffs have alleged statutory authority for recovery of attorneys' fees and for punitive damages. IBMSECU

further denies that it has committed intentional torts which evidence bad faith and denies that Plaintiffs are entitled to attorneys' fees or punitive damages as a result of any act or omission on the part of IBMSECU.

106. In response to paragraph 106 of the Complaint, IBMSECU denies each and every allegation contained therein that relates to IBMSECU. As to the allegations of this paragraph that relate to other defendants, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies each of the allegations in this paragraph that relate to other defendants.

107. In response to paragraph 107 of the Complaint, IBMSECU denies each and every allegation contained therein that relates to IBMSECU. As to the allegations of this paragraph that relate to other defendants, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies each of the allegations in this paragraph that relate to other defendants.

COUNT EIGHT:

**PUNITIVE DAMAGES AGAINST IBMSECU,
JAMISON and QUEST IRA, INC.**

108. In response to paragraph 108 of the Complaint, IBMSECU incorporates its response to paragraphs 1–107 as though fully set forth herein.

109. In response to paragraph 109 of the Complaint, IBMSECU denies each and every allegation contained therein that relates to IBMSECU. As to the allegations of this paragraph that relate to other defendants, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies each of the allegations in this paragraph that relate to other defendants.

110. In response to paragraph 110 of the Complaint, IBMSECU denies each and every allegation contained therein that relates to IBMSECU. As to the allegations of this paragraph that relate to other defendants, IBMSECU is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies each of the allegations in this paragraph that relate to other defendants.

In response to the *ad damnum* or paragraphs of the Complaint immediately following the “WHEREFORE,” IBMSECU denies each and every allegation therein pertaining to IBMSECU and further denies that it is liable to Plaintiffs for the relief sought. As to the allegations of this paragraph that relate to other defendants, IBMSECU is without knowledge sufficient to form a belief as to the truth of the allegations and, on that basis, denies each of the allegations in this paragraph that relate to other defendants.

WHEREFORE, having answered, IBMSECU demands a trial by jury and prays for judgment as follows:

- (a) that judgment be awarded in favor of IBMSECU and against Plaintiffs;
- (b) that Plaintiffs take nothing by way of the Complaint;
- (c) that IBMSECU be awarded its costs and attorney fees, if appropriate; and
- (d) for such other and further relief as the Court deems just and proper.

Dated: April 30, 2018

Respectfully submitted,

/s/ Barry J. Armstrong

Barry J. Armstrong

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**IN THE STATE COURT OF COBB COUNTY
STATE OF GEORGIA**

EDWARD G. RAY, JR. and,)	
YVONNE M. RAY,)	
)	
PLAINTIFFS,)	CIVIL ACTION
)	
VS.)	FILE NO. 18-A-240
)	
IBM SOUTHEASTERN EMPLOYEES’)	
CREDIT UNION, <i>et al.</i>)	
)	
DEFENDANTS.		

CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2018 a true and correct copy of the foregoing has been furnished via U.S. Mail to:

Jason Doss
The Doss Firm LLC
36 Trammell Street
Marietta, Georgia 30064

Justin O’Dell
O’Dell & O’Neal, P.C.
506 Roswell Street, Suite 210
Marietta, Georgia 30060

A true and correct copy has been furnished via E-mail to all defense counsel of record.

/s/ Barry J. Armstrong
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