

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

TYOKA BRUMFIELD, on behalf of herself and all others similarly situated,)	CASE NO.: 17-CV-6459
)	
Plaintiff,)	CLASS ACTION
)	
v.)	CLASS ACTION COMPLAINT FOR
)	DAMAGES, DECLARATORY AND
EQUIFAX, INC., a Corporation,)	INJUNCTIVE RELIEF
)	
Defendant.)	DEMAND FOR JURY TRIAL
)	
)	
)	

Plaintiff Tyoka Brumfield (“Plaintiff”), by and through her undersigned counsel, brings this class action against Defendant Equifax, Inc. (“Defendant” or “Equifax”) on behalf of herself and all others similarly situated (“Class Members”). Plaintiff alleges as follows based on the investigation of her counsel:

NATURE OF THE CASE

1. Plaintiff brings this Class Action Complaint against Equifax for its failure to secure and protect the sensitive personal information of approximately 145 million Americans.
2. According to press releases from Defendant, it learned on July 29, 2017 that that its databases which store the sensitive personal information of approximately 143 million Americans were accessed by hackers. It later increased this figure to 145.5 million Americans.
3. It was not until September 7, 2017 that Defendant publicly announced that its databases were accessed due to a vulnerability in one of its web applications between at least between mid-May 2017 through July of 2017 (the “breach”).
4. The information accessed included, but is not limited to, names, Social Security numbers, birth dates, addresses, driver’s license numbers, credit card numbers and other documents containing personal and highly sensitive identifying information, including confidential information (the “Personal Information”).

5. As a direct and proximate result of Equifax's security protocols falling below industry standards, criminals were able to access, steal, and misuse Plaintiff's and Class Members' Personal Information.

6. Equifax's security failure has placed Plaintiff and Class Members at serious, immediate, and ongoing risk of identity theft.

7. Equifax's security failure will cause Plaintiff and Class Members to suffer monetary losses attributable to the costs and expenses associated with identifying, responding to, and correcting harms that only occurred due to the breach, and Equifax's willful and negligent conduct in failing to safeguard the Personal Information.

8. The breach was directly and proximately caused by Equifax's knowing violation of its duty to safeguard the Personal Information. Specifically, Equifax knowingly failed to comply with industry standards for data security, failed to implement security measures it knew would be effective and prevent such breaches, and consequently permitted the Personal Information of millions of individuals, including Plaintiff and the Class Members, to be compromised.

9. Equifax could have prevented the breach by implementing proper data security measures to protect the Personal Information it collects during its normal course of business.

10. Equifax ignored Plaintiff's and Class Members' right to have their Personal Information kept safe by intentionally, willfully, recklessly, or negligently failing to take adequate and reasonable measure to ensure its databases were properly secured in line with industry standards, by failing to disclose to consumers the fact that it did not utilize adequate and reasonable security measures to protect their Personal Information, by failing to take available and reasonable steps to prevent the breach from occurring, and failing to detect the breach.

11. Accordingly, Plaintiff on behalf of herself and all others similarly situated, assert claims for violations of New York's General Business Law ("GBL"), and all other substantially similar statutes enacted in other states, and negligence.

12. Plaintiff, on behalf of herself and all others similarly situated, seeks monetary damages, punitive damages, statutory damages, attorneys' fees and costs, and all other relief as authorized in equity and by law that this Honorable Court deems appropriate.

JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because Plaintiff and Defendant are diverse in citizenship; the aggregate amount in controversy in this case exceeds \$5 million, exclusive of interests and costs; the members of the proposed Classes number in excess of 100; and members of the proposed Classes are citizens of different states than Equifax.

14. There is also federal jurisdiction in this Court under 28 U.S.C. § 1331, as Plaintiff makes claims pursuant to the Fair Credit Reporting Act, 15 U.S.C. §§ 1681e, *et seq.*

15. This Court has personal jurisdiction over Equifax because Equifax conducts substantial business in the State of New York and in the counties that makes up the U.S. District Court for the Eastern District of New York.

16. Venue is proper in the Eastern District of New York because Plaintiff resides in this District; Equifax conducts substantial business in the District; and/or the conduct complained of in this Complaint occurred in or arose out of this District.

PARTIES

17. Plaintiff Tyoka Brumfield is an individual who resided in Brooklyn, Kings County, New York at the time of the breach. After learning of the breach, Ms. Brumfield visited www.equifaxsecurity2017.com, input the requested information, and determined that her Personal Information was affected. As a result of the breach, Ms. Brumfield suffered and will continue to suffer from the loss of value of her Personal Information, has and will expend time and resources, including future costs, to protect herself from identity theft and other foreseeable harms and damages resulting from her Personal Information being unlawfully transmitted to third parties due to Equifax's acts and omissions.

18. Equifax is a corporation incorporated under the laws of the State of Georgia doing business at all times relevant to this action in the State of New York and in this District. Equifax is one of the largest consumer reporting agencies worldwide and sells credit monitoring and identity theft protection services to consumers and third parties for profit.

CLASSWIDE AVERMENTS

19. In addition to selling credit protection and identity theft protection services, Equifax collects, aggregates, analyzes, and maintains Personal Information of hundreds of millions of consumers worldwide and sells this information to third parties in the form of consumer credit reports, insurance reports, demographic and analytics information, among other uses.

20. Prior to the breach at issue herein, several entities storing sensitive personal information have suffered major data breaches, including Anthem, Experian, among others.

21. Additionally, Equifax has suffered at least two major breaches of its own placing it on notice that its security measures in place at the time of the breach were inadequate – one in September 2015 involving data belonging to 15 million consumers and another in May 2016 involving 430,000 consumers.

22. Although Equifax stated it became aware of the breach on July 29, 2017, the media outlet Bloomberg reported that Equifax also became aware of a massive data breach in March 2017, four months earlier than Equifax stated. While Equifax has acknowledged the March 2017 breach, it has denied that the March 2017 breach is connected in any way to the breach described herein.

23. Although Equifax knew about the breach for at least six weeks, it was not until September 7, 2017 that Equifax publicly disclosed for the first time the breach had occurred.

24. Equifax did not notify Plaintiff and certain members of the Classes that their Personal Information had been accessed. Instead, Equifax instructed consumers to visit www.equifaxsecurity2017.com to learn whether or not their Personal Information had been impacted.

25. Equifax involved a company called TrustedID, a wholly owned subsidiary of Equifax based in Palo Alto, California, to monitor activity on consumers' credit reports. In asking affected consumers to enroll in TrustedID's service, Equifax did not disclose that TrustedID is its wholly owned subsidiary, or that the terms of the credit monitoring service agreement required consumers, including Plaintiff and members of the Classes, to arbitrate disputes with TrustedID and Equifax, thus precluding them from bringing an action in court.

26. Although Equifax later stated that it would not enforce the arbitration agreement with regard to the data breach, no steps have been taken to alter the service agreement with TrustedID.

27. As described herein, Equifax publicly announced on September 7, 2017 that its databases were accessed by hackers due to a faulty web application, subjecting the Personal Information of approximately 143 million Americans to misappropriation. It later increased its estimate to 145.5 million Americans.

28. Due to Equifax's failure to remediate its website application vulnerability, hackers gained access to databases and transmitted to unauthorized persons Plaintiff's and Class Members' Personal Information without any detection or limitation from Equifax until July 29, 2017.

29. The Personal Information accessed due to the breach included, but is not limited to, names, Social Security numbers, birth dates, addresses, driver's license numbers, credit card numbers, and documents containing personal identity information, which is now in the possession of unidentified and unprosecuted criminals.

30. The breach was a direct and proximate result of Equifax's failure to properly safeguard and protect Plaintiff's and Class Members' Personal Information from unauthorized access, use, distribution, and other illicit purposes as required by various states and federal laws and regulations, industry practices, and common law, including Equifax's failure to create and implement safeguards to ensure the security and confidentiality of Plaintiff's and Class Members' Personal Information.

31. Had Equifax created and implemented proper safeguards in line with industry standards, this would ostensibly have protected Plaintiff and Class Members from reasonably foreseeable threats to the security and value of their Personal Information.

32. Equifax was not only on notice that its security systems were vulnerable due to past breaches of its own systems and highly publicized breaches of data belonging to its competitors and customers, but had the resources to prevent the breach described herein.

33. Despite being on actual notice of the risk of a future breach and having such resources, Equifax willfully neglected to invest in proper data security measures,

34. Had Equifax invested in proper data security measures, remedied the deficiencies in its data security systems, or followed industry standards, Equifax would have prevented the breach and the theft of Plaintiff's and Class Members' Personal Information.

35. Additionally, the United States Government Accountability Office noted in a June 2007 report on data breaches that identity thieves can use stolen personal information to open financial accounts, receive government benefits and incur charges and credit in the name of the victim. *See* <http://www.gao.gov/new.items/d07737.pdf>. According to the report, identity theft is harmful specifically because it may take considerable time for the victim to become aware of the theft, and that its victims face "substantial costs and inconveniences repairing damage to their credit records...[and their] good name."

36. Cybercriminals often trade sensitive personal information on the "cyber blackmarket" due to its intrinsic value.

37. Consumer data and sensitive personal information is a multibillion dollar industry. As a nationwide consumer credit reporting agency, Equifax depends on the fact that consumers' personal information is valuable.

38. Consumers place a high value on their sensitive personal information and its privacy. By way of the breach, Equifax has deprived Plaintiff and Class Members of the substantial value of their Personal Information.

39. Plaintiff and Class Members suffered an actual injury in the form of diminution in the value of their Personal Information, as Plaintiff and Class Members entrusted Equifax to protect that information and its value was compromised due to the breach.

40. Plaintiff and Class Members have suffered actual injuries and damages, including but not limited to:

- a. Increased risk of identity theft and fraud;
- b. Improper disclosure of their Personal Information, which is now possessed by criminals who have not been identified or prosecuted and are thus in total control of that Personal Information;
- c. The value of any time spent mitigating the increased risk of identity theft and fraud; and,
- d. Deprivation of the value of their Personal Information, for which there is an established and well-recognized market.

41. Plaintiff and Class Members have suffered imminent and foreseeable injury arising from the increased risk of future fraud, identity theft, and misuse of their Personal Information by criminals who have, or foreseeably will, misuse that information for illegal purposes that is injurious to Plaintiff and Class Members.

42. Plaintiff and Class Members have suffered additional damages as a result of the value of time they are, and will be, forced to expend to monitor their identity as a result of the breach.

43. Equifax has acknowledged that Plaintiff and Class Members will suffer damage as a result of lost time, as they have advised consumers to “be vigilant in reviewing their account statements and credit reports,” “immediately report any unauthorized activity to their financial institutions” and to “monitor their personal information.”

44. Plaintiff and Class Members have a continuing interest in ensuring that their Personal Information, which is also still in Equifax’s possession, is protected from future

breaches, and therefore have an interest in Equifax altering its prior conduct to comport with industry standards.

45. As a direct and proximate result of Equifax's conduct, Plaintiff and Class Members now face foreseeable time spent surveilling their financial and personal records, and monitoring whether their identity has been stolen in addition to any monetary damages resulting from fraudulent use of the Personal Information.

CLASS ACTION ALLEGATIONS

46. Plaintiff incorporates the preceding paragraphs as if more fully set forth herein.

47. Plaintiff brings this action on behalf of the Nationwide Class, which is defined as:

Nationwide Class: All United States residents whose Personal Information became accessible in the breach disclosed on September 7, 2017.

48. Plaintiff also brings this action on behalf of a New York Class, which is defined as:

New York Class: All New York residents whose Personal Information became accessible in the breach disclosed on September 7, 2017.

49. Excluded from the Classes are: a) any Judge or Magistrate presiding over this action and members of their families; b) Defendant, Defendant's subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest and their current or former employees; c) persons who properly execute and file a timely request for exclusion from the Classes; d) the legal representatives, successors or assigns of any such excluded persons; e) all persons who have previously had claims finally adjudicated or who have released their claims against Defendant similar to those alleged herein; and f) any individual who contributed to the unauthorized access of the Personal Information held by Defendant.

50. While the exact number and identities of the Class Members are unknown at this time, and can only be ascertained through appropriate discovery, on information and belief, the Classes are so numerous – over one hundred and forty-five million (145,000,000) –that joinder of all Class Members is impracticable.

51. Defendant’s wrongful conduct affected all of the Class Members in precisely the same way, including: a) Defendant improperly and inadequately stored consumers’ Personal Information; b) Defendant failed to safeguard consumers’ Personal Information; c) Defendant failed to immediately notify consumers of the data breach and/or notify them directly as soon as practicable after discovering the data breach; and d) Defendant failed to monitor and ensure compliance with pertinent data security standards, statutes and regulations.

52. Questions of law and fact common to Plaintiff and Class Members predominate over any questions affecting only individual Class Members including, without limitation:

- a. Whether Defendant owed duties to Class Members under federal and state law to protect their Personal Information, provide timely notice of unauthorized access to this information, and provide meaningful and fair redress;
- b. Whether Defendant breached these duties;
- c. Whether Defendant acted wrongfully by improperly monitoring, storing and/or failing to properly safeguard consumers’ Personal Information;
- d. Whether Defendant knew, or reasonably should have known, about the deficiencies in their data storage systems;
- e. Whether Defendant willfully failed to design, employ, and maintain a system adequate to protect consumers’ personal information;

- f. Whether representations that Defendant made about the security of its systems were false or misleading;
- g. Whether Defendant's failures resulted in the statutory and common law breaches alleged herein; and
- h. Whether Defendant failed to properly and timely notify Plaintiff and Class Members of the breach in the most expedient time possible and without unreasonable delay after it was discovered.

53. Plaintiff's claims are typical of the claims of all Class Members because such claims arise from the Defendant's wrongful conduct, as alleged above, pertaining to Plaintiff's and Class Members' Personal Information. Plaintiff has no interests antagonistic to the interests of the other Class Members.

54. Plaintiff will fairly and adequately represent and protect the interests of the Class Members. Plaintiff has retained competent counsel experienced in complex commercial litigation and class actions to represent herself and the Classes.

55. This class action also provides a fair and efficient method for adjudicating the claims of Plaintiff and Class Members for the following reasons:

- a. common questions of law and fact predominate over any question affecting any individual Class Member;
- b. the prosecution of separate actions by individual Class Members would likely create a risk of inconsistent or varying adjudications with respect to individual Class Members, thereby establishing incompatible standards of conduct for the Defendant and/or would allow some Class Members'

claims to adversely affect the ability of other Class Members to protect their interests;

- c. Plaintiff anticipates no difficulty in the management of this litigation as a class action; and,
- d. The Classes are readily definable. Prosecution as a class action will eliminate the possibility of repetitious litigation while also providing redress for claims that may be too small to support the expense of individual, complex litigation.

56. For these reasons, a class action is superior to other available methods for the fair and efficient adjudication of this controversy. Certification, therefore, is appropriate under Rule 23(b)(1) or (b)(3) of the Federal Rules of Civil Procedure.

FIRST CAUSE OF ACTION

(Willful Violation of the Fair Credit Reporting Act)

57. Plaintiff incorporates the preceding paragraphs as if more fully set forth herein.

58. Plaintiff brings this cause of action on behalf of herself and members of the Nationwide Class.

59. Plaintiff and Class members are consumers subject to the protections of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681a(c).

60. The FCRA defines a “consumer reporting agency” as “any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties” 15 U.S.C. § 1681a(f).

61. Defendant fits within this definition of a consumer-reporting agency under the FCRA because, for monetary fees, it regularly engages in the practice of assembling or

evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

62. Because it is a consumer reporting agency, Defendant is required by the FCRA to “maintain reasonable procedures designed to . . . limit the furnishing of consumer reports to the purposes listed under section 1681b of this title.” 15 U.S.C. § 1681e(a).

63. The FCRA defines a “consumer report” as “any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for -- (A) credit . . . to be used primarily for personal, family, or household purposes; . . . or (C) any other purpose authorized under section 1681b of this title.” 15 U.S.C. § 1681a(d)(1).

64. The compromised data in this case was a consumer report pursuant to the FCRA because it was a communication of information bearing on Class members’ credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living used, or expected to be used or collected in whole or in part, for the purpose of serving as a factor in establishing the Class members’ eligibility for credit.

65. Because it is a consumer-reporting agency, Defendant may only furnish a consumer report under the limited circumstances set forth in 15 U.S.C. § 1681b, “and no other.” 15 U.S.C. § 1681b(a).

66. 15 U.S.C. § 1681b does not permit credit reporting agencies to furnish consumer reports to unauthorized or unknown entities, or computer hackers such as those who accessed the Class members’ Personal Information.

67. Defendant violated § 1681b by furnishing consumer reports to unauthorized or unknown entities or computer hackers, as detailed *supra*.

68. Defendant willfully and/or recklessly violated § 1681b and § 1681e(a) by providing impermissible access to consumer reports and by failing to maintain reasonable

procedures designed to limit the furnishing of consumer reports to the purposes outlined under section 1681b of the FCRA, as described *supra*.

69. Defendant's actions were also willful and reckless because it knew or should have known about its legal obligations regarding data security and data breaches under the FCRA. These obligations are well established in the plain language of the FCRA and relevant regulations. A reasonable consumer-reporting agency knows or should know about these requirements. Defendant nevertheless breached known duties regarding data security and data breaches and deprived Plaintiff and other members of the classes of their rights under the FCRA.

70. Because of Defendant's willful and/or reckless conduct, unauthorized intruders were able to obtain and misuse Plaintiff's and Class members' personal information for no permissible purposes under the FCRA.

71. Plaintiff and the Class members have been damaged by Defendant's willful or reckless failure to comply with the FCRA. Therefore, Plaintiff and each of the Class members are entitled to recover "any actual damages sustained by the consumer . . . or damages of not less than \$100 and not more than \$1,000." 15 U.S.C. § 1681n(a)(1)(A).

72. Furthermore, Plaintiff and the Class members are entitled to punitive damages, costs of the action, and reasonable attorneys' fees. 15 U.S.C. § 1681n(a)(2), (3).

SECOND CAUSE OF ACTION

(Negligent Violation of the Fair Credit Reporting Act)

73. Plaintiff incorporates the preceding paragraphs as if more fully set forth herein.

74. Plaintiff brings this cause of action on behalf of herself and members of the Nationwide Class.

75. Defendant acted negligently by failing to maintain reasonable procedures designed to limit the furnishing of consumer reports to the purposes outlined under section 1681b of the FCRA. Defendant's negligent failure to maintain reasonable procedures is supported by, *inter alia*, former employees' admissions that Defendant's data security practices have deteriorated in recent years, and Defendant's numerous other data breaches in the past.

Additionally, because it claimed to be an industry leader in data breach prevention, Defendant was well aware of the importance of the measures organizations should take to prevent data breaches, yet failed to take them.

76. Defendant's negligent conduct permitted unauthorized intruders to obtain Plaintiff's and the Class members' Personal Information and consumer reports for no permissible purposes under the FCRA.

77. Plaintiff and Class members have suffered damage as a result of Defendant's negligent failure to comply with the FCRA. Therefore, Plaintiff and each of the Class members are entitled to recover "any actual damages sustained by the consumer." 15 U.S.C. § 1681o(a)(1).

78. Plaintiff and members of the proposed Class are also entitled to recover their costs of the action, as well as reasonable attorneys' fees. 15 U.S.C. § 1681o(a)(2).

THIRD CAUSE OF ACTION

(Violation of New York's General Business Law § 349(a))

79. Plaintiff incorporates the preceding paragraphs as if more fully set forth herein.

80. Plaintiff brings this cause of action on behalf of herself and members of the New York Class.

81. In violation of GBL § 349, Plaintiff and members of the New York Class were subjected to Defendant's unfair or deceptive acts or practices by failing to properly implement adequate security measures that comport with industry standards to protect the Personal Information.

82. Defendant willfully ignored the readily apparent risk of a security breach of its data systems and failed to create, implement, and maintain reasonable security measures to prevent, detect, and mitigate the breach.

83. Defendant benefitted from its decision not to implement proper preventative measures that would have prevented, detected, and mitigated the breach.

84. Defendant's failure to create, implement, and maintain reasonable security measures was the direct and proximate cause, and continuing cause, of substantial injury to Plaintiff and New York Class members.

85. Defendant's acts and omissions are and were against public policy and are and were unethical, deceptive, unfair, and oppressive. Furthermore, they caused and will continue to cause substantial injury to consumers, including Plaintiff and the New York Class.

86. As a direct result of Defendant's conduct described in this Complaint, Plaintiff and members of the New York Class have suffered actual and ascertainable losses, including improper disclosure of Personal Information, loss in value of their Personal Information, time and money lost due to taking efforts to mitigate and remediate the effects of the breach, including but not limited to the increased and imminent threat of identity theft that resulted and that Plaintiff and New York Class members continue to face.

87. As a proximate and direct result of Defendant's failure to create, implement, and maintain security protocols that comport with industry standards, Plaintiff and members of the New York Class have been placed at immediate and substantial risk of harm of their Personal Information being exploited and their privacy being invaded by unauthorized third parties.

88. The injuries suffered by Plaintiff and New York Class members' were directly and proximately caused by Defendant's violations of GBL § 349, and Defendant's actions were carried out with such reckless indifference toward the rights of Plaintiff and New York Class members that an award of punitive and/or treble damages is appropriate.

89. Defendant also violated GBL § 349 by attempting to entice Plaintiff and members of the New York Class to sign up for TrustedID's credit monitoring service, which includes a broad class action waiver and arbitration agreement that only benefitted Defendant.

90. Due to the actions of Defendant as described herein, Plaintiff and members of the New York Class request that this Court provide a declaration pursuant to GBL § 349 that any arbitration provision that Plaintiff or members of the New York Class may be subjected to due to their enrollment in TrustedID's credit monitoring service is void.

91. Accordingly, Plaintiff, on behalf of herself and other members of the New York Class, seek to recover actual damages of \$50.00, whichever is greater, three times actual damages, and reasonable attorneys' fees and costs.

FOURTH CAUSE OF ACTION

(Negligence)

92. Plaintiff incorporates the preceding paragraphs as if more fully set forth herein.

93. By virtue of accepting, storing, monitoring, aggregating, and maintaining the Personal Information of Plaintiff and members of the Classes in its database systems and networks, Defendant affirmatively undertook a duty to Plaintiff and the Classes to exercise reasonable care to secure and safeguard that information, and to use industry-standard methods to do so. Defendant knew or should have known that the Personal Information was, at least in part, confidential and of value and should be protected as such.

94. Defendant had a duty of care not to subject Plaintiff and members of the Classes, including their Personal Information, to an unreasonable risk of harm because they and it are foreseeable and probable victims of inadequate security protocols.

95. Defendant owed several other duties to Plaintiff and the members of the Classes, which included, but are not limited to:

- a. to exercise reasonable care in obtaining, storing, aggregating, securing, safeguarding, deleting, and protecting Personal Information that is in its possession;
- b. to protect Personal Information in its possession using reasonable and adequate security procedures that are compliant with industry-standard practices; and,
- c. to implement processes to efficiently detect a breach and to timely act on warnings about data breaches such as those it previously suffered and those suffered by its competitors and customers, including promptly providing notice to Plaintiff and Class Members of the breach.

96. Defendant knew or should have known the risks of collecting, storing, aggregating, and securing Personal Information and the paramount and critical importance of creating, implementing, and maintaining adequate security systems. Defendant therefore was on actual notice of the imminent risk of another breach and yet failed to take corrective or preventative action.

97. Defendant knew or should have known that its systems did not adequately protect Plaintiff and Class Members' Personal Information.

98. Defendant breached the above-mentioned duties to Plaintiff and Class Members by failing to create, maintain, and implement adequate data security protocols to protect their Personal Information.

99. Because Defendant knew that a breach of its systems would damage millions of individuals, including Plaintiff and Class Members, it had a duty to adequately protect the Personal Information contained therein.

100. Defendant has a special relationship with Plaintiff and Class Members because they willingly trusted Defendant with their Personal Information and such trust was based on the mutual understanding that Defendant would take proper security measures. Furthermore, Defendant solely had the ability to protect its systems and the Personal Information stored within.

101. Defendant's own conduct created an imminent and foreseeable risk of harm to Plaintiff and Class Members. Such misconduct included, but is not limited to, failing to:

- a. Secure its systems despite being aware of their vulnerability to an attack;
- b. Comply with industry standards for data security;
- c. Implement adequate data security systems and properly monitor them;
and,
- d. Create, maintain, and implement the systems, policies, and procedures necessary to prevent, mitigate and halt the breach.

102. Equifax breached the duties it owed to Plaintiff and Class Members in multiple ways, including but not limited to:

- a. By failing to create, implement, and maintain adequate security systems, practices and procedures necessary to protect Personal Information, thereby creating an imminent and foreseeable risk of harm;
- b. By failing to comply with minimum industry standards for data security; and,
- c. By failing to timely discover and disclose to consumers, including Plaintiff and Class Members, that their Personal Information had been improperly accessed and acquired.

103. Because of Defendant's negligent acts and omissions as described herein, Defendant unlawfully breached its duty to use reasonable care to adequately safeguard Plaintiff and Class Members' Personal Information during the time it was within Defendant's possession, control, and unique ability to safeguard.

104. Because Defendant failed to provide timely notification, or provide any notification whatsoever, to Plaintiff and Class Members that their Personal Information was impacted by the breach, Defendant prevented Plaintiff and Class Members from taking meaningful steps to secure their identifying information and prevent future harm.

105. Defendant's conduct was grossly negligent and deviated from reasonable standards of care, including such duties described above and all other duties imposed by law.

106. But for Defendant's wrongful and negligent breach of the duties it owed to Plaintiff and Class Members, the Personal Information would not have been impacted.

107. The injury and harm, including imminent and foreseeable future injuries and harms, that Plaintiff and Class Members have and will suffer is the direct and proximate result of Defendant's negligent conduct.

108. Neither Plaintiff nor Class Members contributed to the breach and subsequent misuse of their Personal Information as described herein.

109. As a direct and proximate result of Defendant's conduct, Plaintiff and Class Members suffered damages that may take years to detect, and the potential scope of those harms and damages can only be assessed after a comprehensive investigation of the facts and events surrounding the identity theft discussed herein.

FIFTH CAUSE OF ACTION

(Declaratory Judgment)

110. Plaintiff incorporates the preceding paragraphs as if more fully set forth herein.

111. At all relevant times, the Declaratory Judgment Act ("DJA"), 8 U.S.C. § 2201(a), was in effect, and which states:

In a case of actual controversy within its jurisdiction...any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

112. Plaintiff and Class Members request an order declaring that the arbitration clause and class action waiver in the TrustedID Premier Terms of Use are invalid and do not apply to any claims they may have arising out of the breach.

113. The controversy presented here is definite and concrete, and affects the adverse legal interests of the parties. As a result of the breach and the release of Plaintiff's and Class Members' Personal Information, Plaintiff and Class Members are at heightened risk of having that Personal Information used by unauthorized individuals for illicit purposes.

114. Plaintiff and Class Members may need to obtain credit monitoring to protect against the unauthorized use of their Personal Information that was in Defendant's care. This need is urgent, as this information is extremely sensitive and can be used to steal Plaintiff's and Class Members' identities which may have the adverse effects described herein.

115. Defendant created a website that allows individuals to check if their Personal Information is at risk, and allows individuals to enroll in one year of free credit monitoring through Defendant's credit monitoring system, TrustedID Premier.

116. However, the Terms of Use for TrustedID Premier include provisions that require those enrolled to settle all disputes – including Defendant's failure to adequately safeguard Plaintiffs' and Class Members' Personal Information – through binding, individual arbitration “even if the facts and circumstances upon which the claims are based already occurred or existed.” (*See*, TrustedID Premier Terms of Use, EQUIFAX, *available at*: <https://trustedidpremier.com/static/terms>).

117. Defendant is therefore requiring that all Class Members waive their right to participate in a class action for their claims arising from the breach, and to submit individual claims to arbitration, before Defendant will assist those individuals with important credit monitoring to prevent the harm Defendant has caused.

118. The only other option Class Members have is to pay for credit monitoring on their own, and Class Members who cannot afford to purchase credit monitoring are forced to either waive their right to participate in a class action or forego any credit monitoring and face the risk of identity theft without protection.

119. As a result, Plaintiff and Class Members have been, and will continue to be, caused significant harm in that they must choose between waiving legal rights or risking identity theft. Plaintiffs and Class Members will continue to suffer harm if this Honorable Court were to deny their request for declaratory relief, as the harm of identity theft is ongoing.

120. If Plaintiffs' and Class Members' request for declaratory relief is rejected, this controversy will continue, as they must continue to pay for credit monitoring or risk additional

identity theft, or waive legal rights against Defendant, and many Class Members will continue to face this situation until the case is finally resolved.

121. Because this issue does not affect the merits of Plaintiff's and Class members' claims, there are no disputed legal and factual issues that this Court would need to resolve when considering their request for declaratory relief, and instead seeks to preserve the *status quo* in which Plaintiff and Class Members have the right to pursue their claims against Defendant arising out of the data breach in Court as part of a class action lawsuit.

122. This Court should thus declare that the arbitration clause and class action waiver in the TrustedID Premier Terms of use are invalid and do not apply to any claims they may have arising out of the breach.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of all claims in this Complaint so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the proposed Classes, respectfully requests that this Honorable Court enter judgment in their favor and against Defendant, as follows:

- A. Certifying the Classes under Rule 23 of the Federal Rules of Civil Procedure, certifying Plaintiff as representative of the Classes and designating his counsel as counsel for the Classes;
- B. Awarding compensatory damages to Plaintiff and the Classes in the amount exceeding \$5,000,000, exclusive of interest and costs, to be determined by proof;
- C. Awarding Plaintiff and the Classes both statutory damages and punitive damages;
- D. For declaratory and equitable relief, including restitution and disgorgement;

- E. For an order enjoining Defendant from continuing to engage in the wrongful acts and practices alleged herein;
- F. For injunctive relief that requires Defendant to take steps to repair the injury caused by its wrongful conduct;
- G. For payment of attorneys' fees and costs as allowable by law; and
- H. For an award of both pre-judgment and post-judgment interest; and
- I. Granting any other relief as this Honorable Court deems just and proper.

Dated: November 6, 2017

/s/ Gaitri Boodhoo
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JS 44 (Rev. 06/17)

CIVIL COVER SHEET

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 the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM)

<p>I. (a) PLAINTIFFS Tyoka Brumfield,</p> <p>(b) County of Residence of First Listed Plaintiff <u>Kings</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) The Brualdi Law Firm, P.C. 29 Broadway, Suite 2400 New York, New York 10006 (212) 952-0602</p>	<p>DEFENDANTS Equifax, Inc.</p> <p>County of Residence of First Listed Defendant <u>Fulton</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</p> <p>Attorneys (If Known)</p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <p><i>(For Diversity Cases Only)</i></p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

<p>CONTRACT</p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p>TORTS</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Personal Injury - Medical Malpractice</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p>PERSONAL PROPERTY</p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p>FORFEITURE/PENALTY</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p> <p>LABOR</p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Management Relations</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 751 Family and Medical Leave Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Employee Retirement Income Security Act</p> <p>IMMIGRATION</p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p>	<p>BANKRUPTCY</p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p>PROPERTY RIGHTS</p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 835 Patent - Abbreviated New Drug Application</p> <p><input type="checkbox"/> 840 Trademark</p> <p>SOCIAL SECURITY</p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XV1</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p>FEDERAL TAX SUITS</p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS - Third Party 26 USC 7609</p>	<p>OTHER STATUTES</p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input checked="" type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 850 Securities/Commodities Exchange</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>
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V. ORIGIN *(Place an "X" in One Box Only)*

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District *(specify)* 6 Multidistrict Litigation - Transfer 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*
15 U.S.C. §1681(e), et seq., FCRA

Brief description of cause:
FCRA violation, Violations, Violation of NY GBL, Negligence

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY *(See instructions)* JUDGE Jack B. Weinstein DOCKET NUMBER 17-cv-05280

DATE 11/06/2017 SIGNATURE OF ATTORNEY OF RECORD [Signature]

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG JUDGE _____

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Gaitri Boodhoo, counsel for Tyoka Brumfield, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- the complaint seeks injunctive relief,
- the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that "A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? No
- 2.) If you answered "no" above:
 - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? No
 - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County?

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

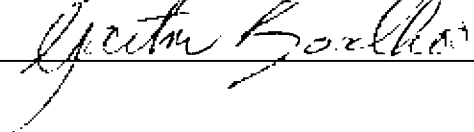
I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

- Yes
- No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

- Yes (If yes, please explain)
- No

I certify the accuracy of all information provided above.

Signature: 

Civil Action No. _____

PROOF OF SERVICE

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

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

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

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____ .

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: