

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

JOSH GROSSBERG and LISA
OLIVO, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

Equifax Inc.,

Defendant.

No. 17-cv-5280

**COMPLAINT FOR NEGLIGENCE AND
CONSUMER FRAUD**

JURY TRIAL DEMANDED

Plaintiffs Josh Grossberg and Lisa Olivo (“Plaintiffs”), by their undersigned counsel, allege the following upon personal knowledge as to their own acts and upon information and belief as to all other matters.

NATURE OF THE ACTION

1. This is a nationwide class action on behalf of all persons whose personal identifying financial information was provided to Equifax Inc. (“Equifax” or “Defendant”) arising out of Defendant’s “data breach,” which resulted in a third party obtaining the names, birth dates, *Social Security numbers*, addresses and some driver's license numbers, of more than 140 million consumers.

2. Social security numbers, and the other identifying information that was taken from Defendant’s databases, are among the most highly sensitive information that consumers possess. The theft of this information may allow a thief to impersonate a consumer and obtain access to nearly every account that consumer owns. As explained by a cyber-security expert,

This is a security risk for any and every website that anyone uses. . . . Most often, security questions to access [] websites use that data, like a previous address, so this becomes an open-source intelligence nightmare[]. It's nasty. If I can get my hands on

that information I can call a bank. They're going to ask me for your social, address, the information that was leaked here, to get access.

3. Plaintiff and the Class are now subject to the serious and real risk that highly confidential information they shared or allowed to be shared with Equifax, in reliance on Equifax's assurances of security, will be used to their detriment.

4. Although Defendant knew about the data breach as early as July 29, 2017, it did not disclose the breach to the public until September 7, 2017. As a result, Plaintiff and the Class remained ignorant that their sensitive information was compromised and were unable to take any actions to protect themselves for over a month.

5. Moreover, unlike other data breaches, not all of the people affected by the Equifax breach may be aware that they're customers of the company. Equifax gets its data from credit card companies, banks, retailers, and lenders who report on the credit activity of individuals to credit reporting agencies, as well as by purchasing public records. People affected may not realize that Equifax has their data.

JURISDICTION AND VENUE

6. This Court has jurisdiction over Plaintiff's claims pursuant to the Class Action Fairness Act, 28 U.S.C. §1332(d). At least one member of the Class is of diverse citizenship from Defendant, damages are over \$5,000,000 exclusive of interest and costs, and the Class contains more than 100 members.

7. Venue is proper in this District because a substantial part of the events or omissions giving rise to Plaintiffs' claim occurred in this District, including Plaintiffs' provision of information to Defendant, purchase and/or use of Defendant's services, and purchase of credit monitoring services as a result of Defendant's data breach.

THE PARTIES

8. Plaintiff Josh Grossberg is a citizen of the State of New York, residing in Queens, New York. Plaintiff provided sensitive information to Defendant, including his social security number, current and former address, date of birth, and other identifying information, in order to receive one or more credit reports and in connection with the purchase of access to view his credit score. Plaintiff paid \$21.76 to purchase credit monitoring services to protect himself as a result of Defendant's data breach.

9. Plaintiff Lisa Olivo is a citizen of the State of New York, residing in Queens, New York. Plaintiff provided sensitive information to Defendant, including her social security number, current and former address, date of birth, and other identifying information, in order to receive one or more credit reports and in connection with the purchase of access to view her credit score.

10. Defendant Equifax is a Georgia company with headquarters at 1550 Peachtree Street, NW, Atlanta Georgia. Equifax is one of the three major credit reporting and monitoring agencies in the United States. As a result of a law passed in 2003, each person in the United States is entitled to one free credit report per year from Equifax. Consumers can also purchase access to their credit score from Defendant for a fee. Equifax also provides identity theft monitoring and protection services, and sells information about consumer "credit intelligence" to businesses. According to its SEC filings, Defendant's operating revenue was over \$3 billion in 2016. Over \$1 billion of that revenue came from "U.S. Information Solutions."

CLASS ACTION ALLEGATIONS

11. Plaintiff brings this class action pursuant to Fed. R. Civ. P. 23(a) and (b)(3) on behalf of the following nationwide class of consumers (the “Class”) and the following New York Sub-Class (the “Sub-Class”):

Class:

All persons in the United States (a) whose personal information was provided to Defendant from September 8, 2014 through the present and/or (b) were subject to risk of data loss, credit harm or identity theft and purchased third-party credit monitoring services as a result of Defendant’s data breach.

Sub-Class:

All persons in the State of New York (a) whose personal information was provided to Defendant from September 8, 2014 through the present and/or (b) were subject to risk of data loss, credit harm or identity theft and purchased third-party credit monitoring services as a result of Defendant’s data breach.

12. Excluded from the Class are all attorneys for the class, any judge presiding over this action, Defendant, and any corporations, partnerships or other entities owned by Defendant.

13. Members of the Class are so numerous that joinder of all members would be impracticable. According to news reports, the personal information of up to 143 million consumers was compromised.

14. Questions of law and fact are common to all the members of the Class that predominate over any questions affecting only individual members, including:

- a. Whether Defendant had a duty to safeguard the sensitive identifying information of Plaintiffs and the Class;
- b. Whether Defendant breached that duty;
- c. Whether the data of Plaintiff and the Class was compromised;

d. Whether Defendant's conduct was deceptive, misleading, unfair or unconscionable; and

e. The amount by which Plaintiffs and the Class were damaged.

15. Plaintiffs' claims are typical of the claims of the members of the Class. Plaintiffs have no interests antagonistic to those of the Class, and Defendant has no defenses unique to Plaintiffs.

16. Plaintiffs will protect the interests of the Class fairly and adequately, and Plaintiffs have retained attorneys experienced in class action litigation.

17. A class action is superior to all other available methods for this controversy because:

a. The prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual members of the Class that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede their ability to protect their interests;

b. The prosecution of separate actions by the members of the Class would create a risk of inconsistent or varying adjudications with respect to the individual members of the Class, which would establish incompatible standards of conduct for defendant;

c. Defendant acted or refused to act on grounds generally applicable to the Class; and questions of law and fact common to members of the Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

SUBSTANTIVE ALLEGATIONS

18. Defendant collects highly sensitive information from consumers to provide credit reports, among other things. Defendant's website states:

Specifically, we get information from you when you ask for a free credit report or other services provided through this website. We collect the following information from you online so we can process your requests:

- First and last name (middle initial and suffix, as applicable)
- Social Security Number
- Date of birth
- Current and former mailing address
- Other information we may need to process your request

19. In addition, Defendant receives data from credit card companies, banks, retailers, and lenders who report on the credit activity of individuals to Equifax, as well as by purchasing public records.

20. In connection with its collection of this highly sensitive personal information, Defendant represents that it provides the highest levels of security possible.

21. Defendant's website states that the customer is engaging in a "Secure Transaction: For your protection, this website is secured with the highest level of SSL Certificate encryption." Equifax also has a representation on its website stating: "We know how important it is for your online transactions to be secure. We safeguard the privacy of the information you give us when you fill out our forms online. We encrypt the information to protect it while you are filling out the form, and also when we send the information to any of the nationwide consumer credit reporting companies. We use physical, electronic, and procedural safeguards to protect your personal information."

22. In addition to any representations Defendant makes, Defendant has a duty, as a result of being entrusted with sensitive financial information, to keep that information safe from disclosure to or appropriation by unauthorized parties.

23. Defendant failed to live up to its representations or duties, and, as Defendant announced on September 7, 2017, the personal information of more than 140 million users may have been compromised in a data breach and/or accessed by an unauthorized third party beginning in May, 2017.

24. Although Defendant learned of the data breach on July 29, 2017, it did not inform Plaintiff and the Class of the data breach until September 7.

25. As a result of the data breach, Plaintiffs and the Class have been subject to a heightened risk of credit harm, financial harm, and/or identity theft and/or have been required to pay for third party credit repair and monitoring services.

COUNT I
Negligence

(Brought on Behalf of the Class and the Sub-Class)

26. Plaintiffs incorporate and re-allege all of the preceding paragraphs as if they were fully set forth herein.

27. Defendant had a duty to safeguard the sensitive financial information of Plaintiffs and all similarly situated persons.

28. Defendant failed to safeguard that information, and therefore breached its duty to Plaintiffs and all similarly situated persons.

29. As a direct and proximate result of Defendant's breach, Plaintiffs and all similarly situated persons were harmed in an amount to be determined at trial.

COUNT II
Consumer Fraud
(Brought on Behalf of the Class)

30. Plaintiffs incorporate and re-allege all of the preceding paragraphs as if they were fully set forth herein.

31. Defendant engaged in deceptive, unconscionable and/or unfair business practices by, among other things, stating or implying that it would keep and protect the information of Plaintiffs and the Class.

32. Plaintiffs and the Class were harmed by Defendant's deceptive, unconscionable, and/or unfair business practices in amounts to be determined at trial. Plaintiff and the Class are entitled to, among other things, compensatory damages, statutory damages and penalties, and punitive damages.

COUNT III
Breach of Contract
(Brought on Behalf of the Class and the Sub-Class)

33. Plaintiffs incorporate and re-allege all of the preceding paragraphs as if they were fully set forth herein.

34. Plaintiffs and the Class entered into contracts with Defendant. By its failure to protect the information of Plaintiff and the Class, Defendants have breached those contracts and have also breached implied duty of good faith and fair dealing that is present in every contract.

35. Plaintiff and the Class have been damaged in an amount to be proven at trial.

COUNT IV
N.Y. G.B.L. Section 349 and 350
(Brought on Behalf of the Sub-Class)

36. Plaintiffs incorporate and re-allege all of the preceding paragraphs as if they were fully set forth herein.

37. Plaintiffs and other members of the Sub-Class are “consumers” in accordance with GBL §349.

38. Defendant’s statements concerning data protection alleged above, and/or other statements concerning data protection, were advertisements in accordance with GBL §350.

39. At all relevant times material hereto, Defendant conducted trade and commerce in New York and elsewhere within the meaning of GBL §349.

40. Defendant’s reassurances that it would protect the Sub-Class members’ information and/or Defendant’s failure to disclose flaws in its data protection were misleading in violation of GBL §§349 and 350.

41. As a direct and proximate result of Defendant’s conduct, Plaintiff and the Sub-Class were harmed in an amount to be proven at trial and/or are entitled to statutory damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court grant Plaintiff and the Class the following relief:

A. An order certifying this case as a class action on behalf of the Class and the Sub-Class defined herein under Federal Rule of Civil Procedure 23 (a) and (b)(3), appointing Plaintiffs as Class Representatives, and appointing Plaintiffs’ counsel as Class Counsel;

B. Award Plaintiffs and the Class all statutory damages, compensatory damages, punitive damages, liquidated damages, pre-judgment interest, and post-judgment interest, statutory damages, and any other damages that may be just and proper;

C. Award Plaintiffs and the Class their reasonable attorneys' fees, costs and expenses as authorized by law; and

D. Grant in favor of Plaintiffs and the Class such other relief as may be just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury.

DATED: September 8, 2017

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Attorneys for Plaintiffs

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.)

I. (a) PLAINTIFFS

Josh Grossberg, Lisa Olivo

(b) County of Residence of First Listed Plaintiff Queens (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

Equifax Inc.

County of Residence of First Listed Defendant Fulton County, GA (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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): 28 USC 1332(d), Class Action Fairness Act

Brief description of cause: Negligence, Breach of Contract, Consumer Fraud

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE 09/08/2017 SIGNATURE OF ATTORNEY OF RECORD Orin Kurtz

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, Orin Kurtz, counsel for Plaintiffs, 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: Orin Kurtz

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

JOSH GROSSBERG and LISA OLIVO, on behalf of themselves and all others similarly situated

Plaintiff(s)

v.

Equifax Inc.

Defendant(s)

Civil Action No. 17-cv-5280

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Equifax Inc. 1550 Peachtree Street NW Atlanta, Georgia 30309

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Orin Kurtz Gardy & Notis, LLP Tower 56 126 East 56th Street, 8th Floor New York, NY 10022

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 17-cv-5280

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 \$ _____ 0.00 .

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:

Print

Save As...

Reset