

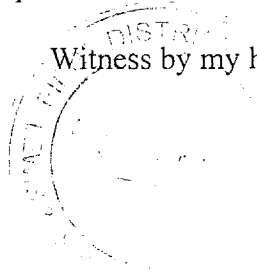
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MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

ELVIS A. JOHNSON, individually and on behalf of all others similarly situated,	Cause No: <u>BDV 2017-723</u>
Plaintiff,	SUMMONS
v.	
EQUIFAX, INC.,	
Defendants,	MICHAEL F MCMAHON PRESIDING JUDGE

THE STATE OF MONTANA TO THE ABOVE NAMED DEFENDANT, EQUIFAX, INC., THROUGH ITS REGISTERED AGENT, CORPORATION SERVICE COMPANY, PO BOX 1691, 26 W. SIXT AVENUE, HELENA, MT 59624:

You are hereby Summoned to answer the Complaint in this action which is filed in the office of the Clerk of this Court, a copy of which is herewith served upon you, and to file your answer and serve a copy thereof upon the Plaintiff's attorney within twenty-one (21) days after the date of service of this Summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.



Witness by my hand and seal of said Court, this 14 day of September, 2017.

CLERK OF COURT

BY: LISA KALLIO
Deputy Clerk

Robert Farris-Olsen
MORRISON, SHERWOOD, WILSON & DEOLA, PLLP
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MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

<p>ELVIS A. JOHNSON, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>EQUIFAX, INC.,</p> <p style="text-align: center;">Defendants,</p>	<p>Cause No: <u>BDV 2017-723</u></p> <p style="text-align: center;">COMPLAINT AND DEMAND FOR JURY TRIAL</p> <p style="text-align: right;">MICHAEL F MCMAHON PRESIDING JUDGE</p>
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COMPLAINT

COME NOW Plaintiff Elvis A. Johnson, individually and on behalf of all others similarly situated (collectively "Plaintiffs"), through counsel, and for his complaint against Equifax, Inc., ("Equifax") states and alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff is a resident of Helena, Lewis and Clark County, Montana
2. Defendant Equifax is a foreign corporation with its headquarters in Georgia.

Equifax is duly registered to do business in the State of Montana.

3. This Court has jurisdiction over this matter.
4. Venue is proper in Lewis and Clark County under § 25-2-122, MCA.

GENERAL ALLEGATIONS

5. Between mid-May through July 2017, Equifax was subject to a Data Breach that affected approximately 143,000,000 U.S. consumers. Equifax has acknowledged that the information accessed primarily names, Social Security numbers, birth dates, addresses and, in some instances, driver's license numbers.
6. In addition, credit card numbers for approximately 209,000 U.S. consumers, and certain dispute documents with personal identifying information for approximately 182,000 U.S. consumers, were accessed.
7. At all times, Equifax was aware of the sensitive nature of the personal information stored in its systems, and that if it were accessed illegally, it could be used for wrongful purposes such as identity theft and fraud.
8. Equifax discovered the Data Breach on July 29, 2017, but failed to disclose the data breach until September 7, 2017, or more than a month later. Instead of relaying the Data Breach immediately to consumers, Equifax executives sold almost \$2,000,000 worth of shares.
9. Equifax could have prevented the Data Breach. As the Attorney General of Massachusetts, Maura Healey, explained, "this may be the most brazen failure to protect consumer data we have ever seen."
10. So the Data Breach was due to Equifax' inadequate approach to data security, and its protection of consumers personal information.

11. The Data Breach occurred when the perpetrators gained access by exploiting a website application vulnerability.
12. Of the 143,000,000 million U.S. Consumers affected by the Data Breach, including 367,737 Montanans.
13. Mr. Johnson was one of those Montanans affected by the Data Breach.
14. As a result of the Data Breach, Mr. Johnson's personal information has been disseminated to unauthorized third-parties, subjecting him to credit harm and identity theft.
15. To try and remedy the situation, Equifax has offered a free year of credit monitoring through its company TrustedID. But this will not protect Plaintiffs beyond a year. For example, the 2012 and 2014 data breaches of LinkedIn, Dropbox and Yahoo initially exposed almost 750,000,000 email addresses and passwords. In 2016, the information resurfaced and was re-exposed.¹
16. To ensure his identity and credit are protected in perpetuity, not just for the next year, Plaintiffs, including Mr. Johnson, will have to monitor their credit in perpetuity. Meaning, if a consumer uses TrustID for credit monitoring, Equifax will generate additional funds in the long-term due to the Data Breach.
17. Plaintiffs, including Mr. Johnson, have been, and will continue to be, harmed by Equifax's actions.

CLASS ALLEGATIONS

18. The preceding paragraphs are realleged as though set forth in full hereunder.

¹ Experian, *Data Breach Industry Forecast*, 2017 (<https://www.experian.com/assets/data-breach/white-papers/2017-experian-data-breach-industry-forecast.pdf>) (last accessed Sept. 13, 2017).

19. Plaintiff brings this action on his own behalf and on behalf of those persons similarly situated pursuant to Rule 23, Montana Rules of Civil Procedure.

20. The Class is comprised of all persons who satisfy the following criteria:

- a. All persons in the state of Montana;
- b. Who had personal or credit data collected and stored by Equifax;
- c. That was exposed to and/or acquired by unauthorized persons in the Data Breach that Equifax disclosed on September 7, 2017.

21. Excluded from the above class are Equifax and any of its affiliates, parents, or subsidiaries; employees of Equifax; all persons who make a timely election to be excluded from the class; government entities, judges to whom the case is assigned and their immediate family and court staff.

22. The Class is so numerous that joinder of all members is impracticable. Indeed, according to Equifax, nearly 368,000 Montanans were affected by the Data Breach.

23. The Class faces common questions of law and fact:

- a. Whether Equifax had a duty to protect personal confidential information;
- b. Whether Equifax timely disclosed the data breach;
- c. Whether Equifax was negligent in failing to adequately protect personal confidential information;
- d. Whether Equifax's failure to protect personal confidential information breached its duty to protect personal confidential information;
- e. Whether Class members are entitled to relief;

24. Mr. Johnson's claims against Equifax are typical of the class. Through the Data Breach, Class members, including Mr. Johnson, had their personal confidential

information acquired by unauthorized third-parties, subjecting all Plaintiffs, including Mr. Johnson to identity theft, credit harm, and the cost of perpetual credit surveillance.

25. Mr. Johnson will fairly and adequately protect the Class members' interests.

Before filing the suit, Mr. Johnson was informed of his obligations to the class and he has agreed to fulfill those obligations.

26. Mr. Johnson's counsel is experienced consumer counsel, and has litigated numerous consumer and other class actions.

27. The Class is proper under M. R. Civ. P. 23(b)(3). The class' common legal question predominates over individualized questions as described in ¶ 22, above.

COUNT I – NEGLIGENCE

28. The preceding paragraphs are realleged as though set forth in full hereunder.

29. Upon accepting and storing class members' personal and confidential information in its data system, Equifax assumed a duty to exercise reasonable care in securing, storing, and protecting that information access by unauthorized third-party access.

30. Equifax also owed this duty under Montana's general duty statute at § 27-1-701, MCA, which provides that "[e]xcept as otherwise provided by law, each person is responsible not only for the results of the person's willful acts but also for an injury occasioned to another by the person's want of ordinary care or skill in the management of the person's property or person except so far as the person has willfully or by want of ordinary care brought the injury upon the person."

31. Equifax owed an additional duty under Montana's Constitution. Under Article II, Section 3, "the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety,

health and happiness in all lawful ways. In enjoying these rights, *all persons recognize corresponding responsibilities.*” (Emphasis added.) Those corresponding responsibilities include not harming another’s property. A credit rating is considered a property right with “full constitutional protections”. Section 31-3-103, MCA. Equifax had an affirmative obligation to ensure that Mr. Johnson and Class members’ credit is not harmed due to its actions.

32. Equifax breached these duties by failing adequately secure, store and protect Mr. Johnson’s and Class members’ personal confidential information.

33. Due to Equifax’s breaches, Mr. Johnson and class members were harmed.

34. Equifax is liable for its negligence.

COUNT II – NEGLIGENCE PER SE

35. The preceding paragraphs are re-alleged as though set forth in full hereunder.

36. Equifax is liable for its negligence per se.

37. Equifax violated § 30-14-1704, MCA, which provides “Any person or business that conducts business in Montana and that owns or licenses computerized data that includes personal information shall disclose any breach of the security of the data system following discovery or notification of the breach to any resident of Montana whose unencrypted personal information was or is reasonably believed to have been acquired by an unauthorized person. The disclosure must be made without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection (3), or consistent with any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.” Namely, Equifax did not provide the disclosure of the Data Breach without unreasonable delay – it waited more than a month

to disclose the breach, while its executives sold nearly \$2,000,000 worth of Equifax stock.

38. Section 30-14-1704, MCA, was enacted to protect individuals from the harm of data breaches where personal confidential information is disseminated to unauthorized third-parties. Once a consumer has knowledge of a breach, they can take immediate action to remedy the situation or to protect against additional harm.

39. Mr. Johnson and Class members are the type of individuals that § 30-14-1704, MCA, was meant to protect – they are consumers whose personal confidential information was subject to a data breach.

40. Mr. Johnson and class members suffered injuries that the statute was meant to protect them against. Namely, their personal confidential information was disseminated to unauthorized third-parties without their immediate knowledge, and without the opportunity to immediately rectify or mitigate any disclosure of that confidential information.

41. By its own terms, the statute was meant to regulate entities like Equifax.

42. Because Equifax failed to disclose the Data Breach without unreasonable delay, which caused Mr. Johnson and other class members substantial harm, Equifax is liable to Mr. Johnson and class members for the damages it caused and continues to cause.

WHEREFORE, Plaintiff, individually and on behalf of all class members proposed in this complaint, pray for Judgment against Equifax as follows:

1. For an order certifying the Class as defined herein and appointing Plaintiff and his counsel to represent the Class.
2. To be awarded fair compensation in the amount to be decided by a jury with

interest on damages;

3. For an award of punitive damages in an amount to be determined at trial.
4. For such other and further relief as may be just and equitable.

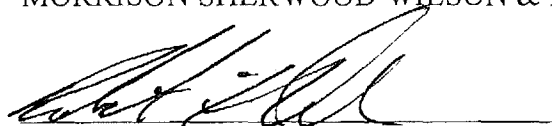
DEMAND FOR JURY TRIAL

Pursuant to M. R. Civ. P. 38, Plaintiff hereby demands a trial by jury.

DATED this ____ day of September, 2017.

MORRISON SHERWOOD WILSON & DEOLA

By:



Robert Farris-Olsen
Attorney for Plaintiff