

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JODIE PAVITT, JENNIFER MERTLICH,  
and SIMON KAUFMAN, individually and  
on behalf of other similarly situated  
persons,

Plaintiffs,

v.

EQUIFAX, INC.,

Defendant.

NO.

CLASS ACTION

COMPLAINT FOR DECLARATORY  
RELIEF, INJUNCTIVE RELIEF,  
AND DAMAGES

Plaintiffs JODIE PAVITT, JENNIFER MERTLICH and SIMON KAUFMAN,  
individually and on behalf of all other similarly situated consumers of the United States, file this  
class action complaint against Defendant EQUIFAX, INC.

**I. NATURE OF THE ACTION**

1. Plaintiffs file this Complaint as a national class action lawsuit on behalf of  
approximately 140 million consumers—including green card holders and business customers—  
across the United States, who have been and continued to be harmed as a result of Defendant  
Equifax’s 2017 data breach because of Equifax’s failure to utilize proper safeguards in the

1 storage and collection of sensitive Personally Identifying Information. To worsen matters,  
2 Equifax immediately exploited the harm it brought to its roughly 143 million customers, with its  
3 hastily erected incident response site, EquifaxSecurity2017.com. By way of  
4 EquifaxSecurity2017.com, Defendant offered the deceptive promise of one year of “free” credit  
5 monitoring in exchange for waiving their right to pursue legal action in a court of law. Plaintiffs  
6 request in this Complaint injunctive relief that will prohibit Defendant from (a) pursuing a class  
7 action ban that would violate federal and state laws and (b) persisting in its unfair, deceptive and  
8 abusive trade practices that lull consumers into a false state of complacency after accepting  
9 Defendant’s offer of “free” credit file monitoring. This Complaint also seeks fair compensation  
10 for all class members who have been or will be injured by the deceptive, unfair, and otherwise  
11 wrongful business practices and conduct of Defendant and its agent(s) that violate Washington  
12 and federal laws. This Complaint’s allegations are based on (1) information provided by the  
13 Securities and Exchange Commission (SEC), the Federal Trade Commission (FTC), and other  
14 governmental agencies along with (2) personal knowledge as to Defendant’s conduct relative to  
15 its negligent data security practices before and after the September 7, 2017 announcement and (3)  
16 personal knowledge as to Defendant’s conduct with regard to stocks sold over the New York  
17 Stock Exchange.

## 18 **II. JURISDICTION AND VENUE**

19 2. This Court has jurisdiction under 28 U.S.C. §1332 because the Parties are citizens  
20 of different states and the amount in controversy is well in excess of \$143 million exclusive of  
21 penalties. Venue is proper under 28 USC §1391 because a significant portion of Washington  
22 State consumers with credit and personal information collected and stored at Defendant’s  
23 database(s) reside in the Seattle, Washington area.

1  
2 **III. PARTIES**

3 3. Defendant Equifax has a market capitalization of approximately \$14.8 billion as  
4 of September 8, 2017 with headquarters in Atlanta, Georgia. Defendant operates via different  
5 entities that include TrustedId, Inc. (a.k.a TrustedIdPremier.com), Equifax Personal Solutions,  
6 LLC (a.k.a. PSOL) and Equifax Information Services, LLC. Each of these entities acts and  
7 continues to act as agents of Defendant. In the alternative, these entities act and continue to act in  
8 concert with Defendant as alleged in this Complaint. Acts and omissions referenced in this  
9 Complaint occurred, were initiated, were furthered, or were given assistance in Washington  
10 State.

11 4. Jodie Pavitt is an individual who resides in Port Orchard, Washington. Simon  
12 Kaufman is an individual who resides in Seattle, Washington. Jennifer Mertlich is an individual  
13 and small business owner who resides in Puyallup, Washington.

14 **IV. GENERAL ALLEGATIONS**

15 5. Defendant is in the business of collecting and selling consumer credit data to other  
16 businesses, including, but not limited to, banks, utilities, insurance firms, and government  
17 agencies.

18 6. Defendant is in the business of selling credit file monitoring and “identity theft  
19 protection” to customers who are concerned about fraudulent use of their Personally Identifiable  
20 Information.

21 7. Plaintiffs are United States consumers--including U.S. citizens, green card  
22 holders, and business customers—whose Personally Identifying Information, such as social  
23 security number, date of birth, and credit histories is collected by Defendant.

1           8.       Defendant is directly or else vicariously liable for the wrongful acts, omissions,  
2 and other conduct referenced in this Complaint.

3           9.       Defendant profits when consumers such as Plaintiffs purchase its “identity theft  
4 protection” and credit monitoring services.

5           10.      When U.S. consumers, including U.S. citizens, green card holders and business  
6 customers, learn that unauthorized Third Parties may have gained access to their Personally  
7 Identifying Information, they are more likely to purchase credit monitoring services from  
8 Defendant.

9           11.      Because of Defendant’s data breach announced on September 7, 2017, Defendant  
10 has invited over 143 million consumers to “enroll in complimentary identity theft protection and  
11 credit file monitoring.”<sup>1</sup>

12          12.      When U.S. consumers and business owners like Plaintiffs require a satisfactory  
13 credit rating, Defendant profits in selling Plaintiffs’ data.

14          13.      Defendant took custody and possession of Plaintiffs’ and millions of other U.S.  
15 consumers’ and business customers’ Personally Identifying Information.

16          14.      Personally Identifying Information is very personal and private for U.S. citizens,  
17 green card holders, and business owners, who allow Defendant to collect, store and access it.

18          15.      Personally Identifying Information is valuable property.

19          16.      Personally Identifying Information is more valuable the more private it is.

20          17.      Personally Identifying Information is sold for money.

21  
22  
23  
24 

---

<sup>1</sup> <https://www.equifaxsecurity2017.com/> (last visited Sept. 9, 2017).

1 18. An increase in the number of entities, especially unauthorized Third-Parties, who  
2 gain access to Personally Identifying Information, reduces the value by which the Personally  
3 Identifying Information can be sold.

4 19. Personally Identifying Information of U.S. consumers and business owners made  
5 more readily available to bad actors can injure the consumer's trade.

6 20. Personally Identifying Information of a U.S. consumer or a business owner made  
7 more readily available to bad actors can injure the consumer's or business owner's property.

8 21. Personally Identifying Information of a U.S. consumer or business owner that is  
9 made public can injure the consumer's privacy.

10 22. Defendant represented to Plaintiffs and millions of similarly situated consumers  
11 and business customers that Defendant would safeguard and maintain the confidentiality of  
12 Personally Identifying Information in its possession and custody.

13 23. Defendant represented to consumers that Defendant would maintain the security  
14 of Personally Identifying Information in its possession and custody.

15 24. In providing and profiting from its collection of Plaintiffs' and millions of other  
16 U.S. citizens', green card holders', and business owners' Personally Identifying Information,  
17 Defendant accepted a legal duty to maintain and protect the confidentiality of these consumers'  
18 Personally Identifying Information from unauthorized users.

19 25. Defendant is in the business of selling consumers' and business owners' credit  
20 histories and credit ratings. It accepted a legal duty to maintain the security of these  
21 consumers'/business owners' Personally Identifying Information.

22 26. From around May 2017 through July 29, 2017, Defendant willfully, knowingly,  
23 callously, recklessly, and negligently permitted and allowed one or more unauthorized "Third-

1 Parties” to access the Personally Identifying Information of Plaintiffs along with the Personally  
2 Identifying Information of over a hundred million U.S. citizens, green card holders, and business  
3 customers without their prior express consent.

4 27. Defendant allowed unauthorized Third-Parties to take possession of this Private  
5 Information without regard for the unauthorized Third-Parties’ designs on Plaintiffs’ and millions  
6 of other consumers’ and business customers’ Personally Identifying Information.

7 28. Defendant knew, or should have known, about the Third-Parties’ taking of Private  
8 Information when it happened or soon thereafter. However, three executives of Defendant sold  
9 almost \$2 million worth of their shares of Defendant’s stock according to SEC filings weeks  
10 before informing the majority of Defendant’s shareholders and before informing affected  
11 consumers and business owners, like Plaintiffs.

12 29. Defendant persists with its unfair, deceptive and otherwise wrongful conduct  
13 under state and federal law as it now creates the illusion that Plaintiffs and other consumers may  
14 benefit from Defendant’s offer of “free” credit monitoring service **as long as Plaintiffs or other**  
15 **affected consumers relinquish the right to sue.**

16 30. Defendant includes the following language in its Terms of Conditions to  
17 consumers who accept its credit monitoring services:

18 AGREEMENT TO RESOLVE ALL DISPUTES BY BINDING INDIVIDUAL  
19 ARBITRATION. PLEASE READ THIS ENTIRE SECTION CAREFULLY BECAUSE  
20 IT AFFECTS YOUR LEGAL RIGHTS BY REQUIRING ARBITRATION OF  
21 DISPUTES (EXCEPT AS SET FORTH BELOW) AND A WAIVER OF THE ABILITY  
22 TO BRING OR PARTICIPATE IN A CLASS ACTION, CLASS ARBITRATION, OR  
23 OTHER REPRESENTATIVE ACTION. ARBITRATION PROVIDES A QUICK AND  
24 COST EFFECTIVE MECHANISM FOR RESOLVING DISPUTES, BUT YOU  
SHOULD BE AWARE THAT IT ALSO LIMITS YOUR RIGHTS TO DISCOVERY  
AND APPEAL.

1 31. In response to growing outrage expressed on social media after consumers found  
2 the Defendant's arbitration clause on its new website, Defendant made a feeble attempt to soften  
3 the blow: Defendant posted a qualification on its new website that "The arbitration clause and  
4 class action wavier [sic] included in the TrustedID Premier Terms of Use applies to the free  
5 credit file monitoring and identity theft protection products, and not the cybersecurity incident."<sup>2</sup>

6 32. The Consumer Financial Protection Bureau (CFPB), in July 2017, issued a rule to  
7 **ban companies from using arbitration clauses to deny groups of consumers their day in**  
8 **court.** 82 FR 33210 18 (effective September 18, 2017).

9 33. Defendant's conduct is unfair, deceptive, and otherwise wrongful under state and  
10 federal law.

11 34. Defendant's conduct has reduced, eliminated and harmed the economic value of  
12 the Personally Identifying Information accessed by unauthorized Third-Parties.

13 35. Defendant's conduct injured the property, trade, and privacy of a number of  
14 consumers, including Plaintiffs.

15 36. Defendant's conduct proximately caused damages to millions of consumers,  
16 including Plaintiffs. For example, Ms. Mertlich will have to devote additional money to protect  
17 her small business from fraudulently obtained lines of credit and utility bills. She has two young  
18 children and a firefighter husband, and will have to divert her attention and time away from her  
19 business and spend at least \$19.95/year for additional identity theft protection and credit file  
20 monitoring for a minimum of three to seven years.

21 37. Defendant's offer of one year of "complimentary" credit file monitoring, with  
22 significant strings attached, is a hollow gesture—in light of Defendant's willfully insufficient and  
23

24 <sup>2</sup> <https://www.equifaxsecurity2017.com/frequently-asked-questions/> (last visited 9/8/2017).

1 negligent collection and storage practices of Plaintiffs’ and many other consumers’ and business  
2 customers’ Personally Identifiable Information that unauthorized Third-Parties have already  
3 accessed. At root, Defendant’s gesture is a poorly executed public relations effort and callous  
4 attempt to increase leads for its credit file monitoring business (e.g., TrustedID).

5 **IV. CLASS ALLEGATIONS**

6 38. Plaintiffs bring this national class action pursuant to Civil Rule 23 individually  
7 and as representatives of the following class of persons (the “Class”). The Washington State  
8 class consists of citizens, green card holders, and business customers who reside in Washington  
9 State and:

- 10 A.) Had their Personally Identifying Information compromised due to  
11 unauthorized third-party access as announced on September 7, 2017, and  
12 B.) Were and continue to be at risk of harm because of the wrongful conduct  
13 of Defendant or Defendant’s agent(s) directly related to the July 29, 2017  
14 (or earlier) third party data breach of approximately 143 million  
15 consumers’ Personally Identifying Information as announced by  
16 Defendant on September 7, 2017.

17 39. Identifying the precise number of aggrieved consumers in Washington State is  
18 straightforward: Query the Defendant’s database and calculate that half of Washington  
19 consumers—approximately 3,640,000—had their Personally Identifiable Information  
20 compromised from Defendant’s 2017 data breach. Then, include half of the Washington based  
21 businesses—approximately 182,000—that were also harmed because of Defendant’s 2017 data  
22 breach.

23 40. The Class excludes any judge assigned to this action and all counsel of record, all  
24 attorneys for the class, as well as all officers and members of Defendant Equifax or its agents.

41. The Class’s claims satisfy all of the requirements for class certification pursuant to  
Civil Rule 23.



1           42.     The Class includes a number of Washington residents as well as millions of  
2 consumers who reside throughout the nation. Joinder of all of the Class members in a single  
3 action is impracticable. In fact, given the number of Class members, the only way to deliver  
4 substantial justice to all Class members is by means of a class action.

5           43.     Questions of fact and law are common to all Class members. These common  
6 questions predominate over any questions affecting only individual members. The questions of  
7 law and fact common to the class arising from Defendant's conduct include, without limitation,  
8 the following:

- 9           (a)     Does Personally Identifying Information have economic value?
- 10          (b)     Did Defendant have a duty to maintain the confidentiality and security of  
11 the Personally Identifying Information of consumers in the possession and  
12 custody of Defendant or its agent(s)?
- 13          (c)     Did Defendant breach their duty to consumers like Plaintiffs by permitting  
14 unauthorized third-parties to access and/or take their Personally  
15 Identifying Information?
- 16          (d)     Are consumers damaged by the unauthorized taking of their  
17 Personally Identifying Information?
- 18          (e)     What legal remedies are available under state and federal law to  
19 consumers like Plaintiffs for Defendant's wrongful conduct alleged in  
20 this Complaint?

21           With regard to only the Washington State class:

- 22          (f)     Did Defendant's conduct violate provisions of WAC 284-04-625 and  
23 RCW 19.255.010?
- 24          (g)     Do violations of WAC 284-04-625 and RCW 19.255.010 constitute unfair  
or deceptive business practice under Washington's Consumer Protection  
Act?
- (h)     Did Defendant's conduct otherwise violate Washington's Consumer  
Protection Act or any other provision of Washington law?

1 44. These questions, and other questions like them, predominate over any  
2 questions affecting only individual persons, and a class action is superior with respect to  
3 considerations of consistency, economy, efficiency, fairness and equity, to other available  
4 methods for the fair and efficient adjudication of claims of all Class members.

5 45. Plaintiffs' claims are typical of those of the other Class members.

6 46. A class action is the appropriate method for the fair and efficient adjudication of  
7 this controversy. Defendant has acted or failed to act in a general manner as part of a systemic  
8 process for which Class members are entitled to remedies.

9 47. Plaintiffs are adequate representatives of the Class. Plaintiffs are represented by  
10 nationally and locally recognized counsel with experience representing clients in class action  
11 litigation, including data breach (e.g., *In Re Anthem Data Breach*) and numerous consumer  
12 protection class actions.

13 48. Maintenance of this action as a class action is a fair and efficient method for the  
14 adjudication of this controversy. It would be impractical and undesirable for each of the  
15 numerous persons who comprise the Class to bring separate, individual actions for their claims  
16 under state and federal law. The maintenance of such separate actions would place a substantial  
17 and unnecessary burden on the courts and could result in inconsistent adjudications, while a  
18 single class action can determine, with judicial economy, the rights of all Class members under  
19 state and federal law.

20 **V. REQUEST FOR RELIEF**

21 49. As permitted by state and federal law, Plaintiffs respectfully requests that the  
22 Court enter judgment in favor of Plaintiffs and the Class against Defendant and provide relief as  
23 follows:

1           A.     Certify the Class, appoint Plaintiffs' counsel as counsel for the Class, and  
2 appoint Plaintiffs as representative of the Class;

3           B.     Declare the illegality of Defendant's conduct under Washington law and  
4 federal law;

5           C.     Grant extraordinary, equitable, and injunctive relief of sufficient  
6 particularity to ensure that Defendant will preserve the confidentiality and security of the  
7 Personally Identifying Information of Class members;

8           D.     Award damages to the Class, including Plaintiffs;

9           E.     Award treble damages to the Class, including Plaintiffs;

10          F.     Award a reasonable incentive award to Plaintiffs in accord with the Court's  
11 assessment of Plaintiffs' contributions to advancing the interests of the Class;

12          G.     Award Plaintiffs and Plaintiffs' counsel reimbursement for the expenses  
13 they incur in connection with this action, including reasonable attorney fees, expert  
14 witness fees, and other costs as provided by law or equity; and

15          H.     Grant all other and further relief as the Court deems just and proper under  
16 law or equity.

17 Dated: September 11, 2017.

18                   /s/ Catherine J. Fleming  
19 Catherine J. Fleming, WSBA #40664  
Brad J. Moore, WSBA #21802  
Ray W. Kahler, WSBA #26171  
20 STRITMATTER KESSLER WHELAN  
KOEHLER MOORE KAHLER  
3600 15<sup>th</sup> Avenue West, #300  
21 Seattle, Washington 98119  
Tel: (206) 448-1777  
22 Fax: (206) 728-2131  
Email: [Catherine@stritmatter.com](mailto:Catherine@stritmatter.com);  
23 [Brad@stritmatter.com](mailto:Brad@stritmatter.com);  
[Ray@stritmatter.com](mailto:Ray@stritmatter.com)