

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

KAETHE SKYE, individually on behalf  
of all others similarly situated,

Plaintiff,

v.

EQUIFAX INC.,

Defendant.

**No.**

**COMPLAINT FOR NEGLIGENCE AND  
CONSUMER FRAUD**

**JURY TRIAL DEMANDED**

Plaintiff Kaethe Skye (“Plaintiff”), by her undersigned counsel, alleges the following upon personal knowledge as to her 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”) and was compromised in 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,

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. The early stages after a data theft are the most crucial, as that time is when the data thieves have incentive to run rampant before the victim discovers the theft.

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.

6. Shortly after Equifax discovered the data breach, and over one month before Equifax disclosed the breach to the public, several Equifax executives sold a substantial amount of Equifax shares thus profiting on inside information before the inevitable decline in Equifax's share prices.

7. Also, on the same day that Equifax announced the data breach, a congressman introduced a bill—which Equifax had lobbied for—limiting the liability of the credit reporting agencies to \$500,000 in the event of a lawsuit.

**JURISDICTION AND VENUE**

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

9. Venue is proper in this District because a substantial part of the events or omissions giving rise to Plaintiff's claim occurred in this District, including Plaintiff's 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**

10. Plaintiff Kaethe Skye is a citizen of the State of Massachusetts, residing in Stoneham. In connection with her application for a loan, Plaintiff's sensitive information was provided to Defendant, including her social security number, current and former address, date of birth, and other identifying information. Plaintiff intends to purchase third-party credit monitoring to protect herself in the wake of Equifax's data breach.

11. 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**

12. 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”):

All persons in the United States whose personal information was provided to Defendant and/or 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.

13. 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.

14. 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.

15. 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 Plaintiff and the Class were damaged.

16. Plaintiff’s claims are typical of the claims of the members of the Class. Plaintiff has no interests antagonistic to those of the Class, and Defendant has no defenses unique to Plaintiff.

17. Plaintiff will protect the interests of the Class fairly and adequately, and Plaintiff has retained attorneys experienced in class action litigation.

18. 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**

19. 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

20. 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.

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

22. 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."

23. 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.

24. 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.

25. 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.

26. As a result of the data breach, Plaintiff 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**

27. Plaintiff incorporates and re-alleges all of the preceding paragraphs as if they were fully set forth herein.

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

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

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

**COUNT II**  
**Consumer Fraud**

31. Plaintiff incorporates and re-alleges all of the preceding paragraphs as if they were fully set forth herein.

32. 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.

33. Plaintiff 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**

34. Plaintiff incorporates and re-alleges all of the preceding paragraphs as if they were fully set forth herein.

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

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

**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 defined herein under Federal Rule of Civil Procedure 23 (a) and (b)(3), appointing Plaintiffs as Class Representatives, and appointing Plaintiff's counsel as Class Counsel;

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

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



**JURY DEMAND**

Plaintiff hereby demands a trial by jury.

DATED: September 13, 2017

HUTCHINGS BARSAMIAN MANDEL CORN, LLP

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*Attorneys for Plaintiff*

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
KAETHE SKYE, Individually and On
Behalf of All Others Similarly Situated
(b) County of Residence of First Listed Plaintiff Middlesex County, MA
(c) Attorneys (Firm Name, Address, and Telephone Number)
Hutchings Barsamian Mandelcorn, LLP
110 Cedar Street, Suite 250, Wellesley Hills, MA 02481
781-431-2231

DEFENDANTS
EQUIFAX INC.
County of Residence of First Listed Defendant Fulton County, GA
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)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
5 5
6 6

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

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

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
6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. §1332(d)
Brief description of cause:
Class action for negligence and consumer fraud

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 0.00
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE Richard G. Stearns DOCKET NUMBER 1:17-cv-11712-RGS

DATE 09/13/2017 SIGNATURE OF ATTORNEY OF RECORD /s/Theodore M. Hess-Mahan

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Kaethe Skye v. Equifax, Inc.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 410, 441, 470, 535, 830\*, 891, 893, 895, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 110, 130, 140, 160, 190, 196, 230, 240, 290,320,362, 370, 371, 380, 430, 440, 442, 443, 445, 446, 448, 710, 720, 740, 790, 820\*, 840\*, 850, 870, 871.
- III. 120, 150, 151, 152, 153, 195, 210, 220, 245, 310, 315, 330, 340, 345, 350, 355, 360, 365, 367, 368, 375, 385, 400, 422, 423, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 625, 690, 751, 791, 861-865, 890, 896, 899, 950.

\*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

Cole v Equifax, Inc., 1:17-cv-11712-RGS

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES  NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES  NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES  NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES  NO

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES  NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division  Central Division  Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division  Central Division  Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES  NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Theodore M. Hess-Mahan

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