

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

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**STATE OF IOWA** *ex rel.*  
THOMAS J. MILLER,  
ATTORNEY GENERAL OF IOWA,

Plaintiff,

v.

**EQUIFAX, INC.;**

Defendant.

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**EQUITY No. EQCE084766**

**PETITION IN EQUITY**

**COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF**

NOW COMES Plaintiff, the State of Iowa *ex rel.* Attorney General Thomas J. Miller, through Assistant Attorney General William R. Pearson, bringing this action complaining of Defendant, EQUIFAX INC. (“Equifax” or “Defendant”) for violations of Iowa Code § 714.16 and Iowa Code Ch. 715C, and states as follows:

**PUBLIC INTEREST**

1. The Iowa Attorney General believes this action to be in the public interest of the citizens of the State of Iowa and brings this lawsuit pursuant to Iowa Code § 714.16 and Iowa Code Ch. 715C.

**JURISDICTION AND VENUE**

2. This action is brought for and on behalf of the State of Iowa, by Thomas J. Miller, Attorney General of the State of Iowa, pursuant to the provisions of Iowa Code §714.16 (the “Consumer Fraud Act”) and Iowa Code Ch. 715C (the “Personal Information Security Breach Protection Act”), and his common law authority as Attorney General to represent the State of Iowa.

3. Venue is proper in Polk County pursuant to Iowa Code § 714.16(10) because Defendant has engaged in violations of Iowa Code § 714.16 and ch. 715C that have affected residents of Polk County.

4. This court has jurisdiction over this matter pursuant to Rule 1.306 of the Iowa Rules of Civil Procedure.

**THE PARTIES**

5. Thomas J. Miller is the Attorney General of the State of Iowa and is expressly authorized by Iowa Code § 714.16(7) of the Consumer Fraud Act to bring this action on behalf of Plaintiff, the State of Iowa.

6. Defendant is a Georgia corporation with its principal place of business at 1550 Peachtree Street NE, Atlanta, Georgia 30309. Defendant is registered with the Iowa Secretary of State as an active foreign business corporation, effective on November 23, 1917.

**ADVERTISEMENT**

7. Subsection 1(a) of the Consumer Fraud Act, Iowa Code § 714.16(1)(a), defines “advertisement” as follows:

The term “advertisement” includes the attempt by publication, dissemination, solicitation, or circulation to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in any merchandise.

The defendant was at all times relevant hereto engaged in advertisement in the State of Iowa by compiling consumers’ sensitive personal information, offering that information for sale in various forms, including credit reports, and accepting payment for the information.

**BACKGROUND**

8. Equifax was founded in 1899 and is known as the oldest of the three largest American consumer credit reporting agencies

9. Equifax, per its company profile, is a global information solutions company that uses unique data, innovative analytics, technology, and industry expertise to power organizations and individuals around the world by transforming knowledge into insights that help make more informed business and personal decisions.

10. Equifax collects, organizes, assimilates, and analyzes sensitive personal information on more than 820 million consumers and more than 91 million businesses worldwide.

11. Equifax's databases include employee data contributed from more than 7,100 employers.

12. Equifax markets and sells consumer credit and insurance reports and analytics to business customers, including, but not limited to: retailers, healthcare organizations and providers, insurance firms, government agencies, public utility providers, credit unions, and banks and finance companies.

13. Consumer credit reports provide detailed information specific to a consumers' life, including but not limited to:

- Personal Information, such as: name, date of birth, current and past addresses, name of current and past employers, and Social Security number;
- Credit History, such as information each account that a consumer has opened with a credit card company, bank or other creditor in the last few years; this includes information such

as: date of account opening and closing, credit limit or loan amount, monthly balance as of each statement date, monthly payment history, and whether payments were made on time;

- Credit Inquiry Information, which includes a record of anytime a consumer's credit report is viewed by another party, such as a lender, credit card company, service provider, landlord, or insurer;
- Public Records, including bankruptcies, tax liens, and civil judgments; and
- Personal Statement, also known as the section which allows a consumer to explain any potential disparaging information contained within his or her file.

14. In the late 1990s, Equifax began offering services and tools to the consumer sector consisting of credit monitoring and identity theft monitoring and prevention products.

15. Equifax represents, via its website, that it takes reasonable steps to protect the security of consumers' personal information and uses technical, administrative, and physical security measures that comply with applicable federal and state laws.

#### **BREACH ANNOUNCEMENT AND RESPONSE**

16. Equifax announced September 7, 2017, that it had been breached due to a vulnerability affecting Equifax's network security infrastructure. Specifically, Equifax was using an open-source software called "Apache Struts" on its website. On March 8, 2017, Equifax was alerted that "Apache Struts" had a vulnerability that would allow remote attackers to execute commands and that Equifax should apply an available patch to fix the vulnerability. Equifax failed to apply the available fixes throughout its operating network.

17. As a result of Equifax's failure to address the Apache Struts vulnerability throughout its network, intruders were able to access Equifax's Network. Once they were inside Equifax's network, the intruder(s) took advantage of additional security failures by Equifax to

move through Equifax's network, access databases containing consumers' personal information, and take that information out of Equifax's network.

18. Although it appears that the vulnerability was exploited in March 2017, the intruder(s) had access to the personal information at issue from May 13, 2017 through July 30, 2017.

19. On September 7, 2017, Equifax announced its data breach to the public disclosing that the data breach affects approximately 143 million U.S. consumers. Equifax subsequently revised that number to total of approximately 148 million U.S. consumers affected by the breach, approximately 1,131,316 of whom are Iowa residents. The information that was compromised in the data breach included the Social Security numbers, birth dates and addresses of all of the affected consumers, as well as in some instances driver's license numbers, credit card numbers and certain credit dispute documents.

20. Equifax offered to all, regardless of whether impacted by the breach, free enrollment in one year of TrustedID Premier monitoring services, which consist of: credit monitoring services, copies to enrollees of their Equifax credit report, an Equifax credit report lock, Social Security number monitoring, and \$1 million of identity theft insurance.

21. Equifax subsequently extended credit monitoring to affected consumers for another year.

22. The data breach has caused substantial harm to consumers by publicly exposing their most sensitive personal data, which has substantially increased the threat of identity theft. This harm includes both economic and non-economic damages that consumers will sustain or have sustained by having to purchase products and services to protect their identities, including credit freezes and credit monitoring, as well as inconvenience and lost wages, by

having to take steps to either protect their identities or, in cases where consumers' identities have already been compromised, having to restore their identities.

**DEFENDANT'S UNFAIR AND DECEPTIVE BUSINESS PRACTICES**

23. Defendant failed to take reasonable steps to protect consumers' sensitive information, including failing to apply a publicly available software patch throughout its network.

24. Consumers in modern society do not choose to have Equifax compile sensitive personal information about them and sell it to potential credit grantors and others who legally are permitted to view this information.

25. Anyone who has conducted a financial transaction within the last few decades, such as an apartment rental, home purchase, car purchase, opening a credit card account, remodeling their home, or borrowing money for higher education, likely has a credit report with Equifax and other consumer reporting agencies.

26. Because of how modern financial transactions operate, it is unavoidable that Equifax collects, compiles, and sells sensitive personal information about most Americans. Because of this breach, at least 148 million Americans live with the very real danger that someone may use their sensitive personal information to commit identity theft.

**APPLICABLE LAW**

27. Iowa Code § 714.16 (2)(a) of the Consumer Fraud Act ("CFA") provides in pertinent part:

The act, use or employment by a person of an unfair practice, deception, fraud, false pretense, false promise, or misrepresentation, or the concealment, suppression, or omission of a material fact with intent that others rely upon the concealment, suppression, or omission, in connection with the lease, sale, or advertisement of any merchandise or the solicitation of

contributions for charitable purposes, whether or not a person has in fact been misled, deceived, or damaged, is an unlawful practice.

**VIOLATIONS**

**COUNT I – CONSUMER FRAUD ACT**

28. Defendant, while engaged in advertisement, committed a deceptive act or practice declared unlawful under Section 714.16 by representing, expressly or by implication, that defendant takes reasonable steps to protect consumers’ personal information in its possession when, in fact, it suffered a catastrophic data breach.

29. Defendant, while engaged in trade or commerce, committed an unfair act or practice declared unlawful under Section 714.16 by failing to take reasonable steps to protect consumers' sensitive personal information, resulting in a security breach that affected as many as 148 million Americans.

**REMEDIES**

30. Section 7 of the Consumer Fraud Act, Iowa Code § 714.16(7), provides in pertinent part:

If it appears to the attorney general that a person has engaged in, is engaging in, or is about to engage in a practice declared to be unlawful by this section, the attorney general may seek and obtain in an action in a district court a temporary restraining order, preliminary injunction, or permanent injunction prohibiting the person from continuing the practice or engaging in the practice or doing an act in furtherance of the practice. The court may make orders or judgments as necessary to prevent the use or employment by a person of any prohibited practices, or which are necessary to restore to any person in interest any moneys...which have been acquired by means of a practice declared to be unlawful by this section. ...

In addition to the remedies otherwise provided for in this subsection, the attorney general may request and the court may impose a civil penalty not to exceed forty thousand dollars per violation against a person found by the court to have engaged in a method, act, or practice declared unlawful under this section;

provided, however, a course of conduct shall not be considered to be separate and different violations merely because the conduct is repeated to more than one person. ...

31. In addition, pursuant to Iowa Code § 714.16A(1), “[i]f a person violates section 714.16, and the violation is committed against an older person, in an action brought by the attorney general, in addition to any other civil penalty, the court may impose an additional civil penalty not to exceed five thousand dollars for each such violation.”

32. Section 11 of the Consumer Fraud Act, Iowa Code § 714.16(11), provides that “[i]n an action brought under this section, the attorney general is entitled to recover costs of the court action and any investigation which may have been conducted, including reasonable attorneys’ fees, for the use of this state.”

**PRAYER FOR RELIEF – COUNT I**

**WHEREFORE**, the Plaintiff respectfully requests this Court to issue an Order:

A. Finding that Defendant EQUIFAX INC. has violated Section 714.16, by engaging in the unlawful acts and practices herein;

B. Ordering Defendant to pay up to \$40,000 per deceptive act or unfair practice and an additional amount of \$40,000 for each act or practice found to have been committed with intent to defraud, as provided in Section 7 of the Consumer Fraud Act, Iowa Code § 714.16(7).

C. Assessing an additional civil penalty in the amount of \$5,000 per violation of the Consumer Fraud Act found by the Court to have been committed by Defendant EQUIFAX INC. against a person 65 years of age and older as provided in Iowa Code § 714.16A(1).

D. Requiring the Defendant EQUIFAX INC. to pay all costs for the prosecution and investigation of this action, as provided by Section 11 of the Consumer Fraud Act, Iowa Code § 714.16(11).

E. Permanently enjoining Defendant EQUIFAX INC. from engaging in the aforementioned acts, practices, methods of competition or any other practice in violation of Consumer Fraud Act pursuant to Iowa Code Section 714.16(7).

F. Providing any such other and further relief as the Court deems just, proper, and equitable under the circumstances.

**COUNT II – PERSONAL INFORMATION SECURITY BREACH PROTECTION ACT**

33. Defendant is a “person who owns or licenses computerized that that includes a consumer’s personal information” under Iowa Code Ch. 715C.

34. Defendant has violated Iowa Code Ch. 715C and Iowa Code Section 714.16 by failing to implement and maintain reasonable security measures to protect records that contain personal information concerning an Iowa resident from unauthorized access, acquisition, destruction, use, modification, or disclosure.

**REMEDIES**

35. Iowa Code Section 715C(9)(a) provides that “A violation of this chapter constitutes an unlawful practice pursuant to section 714.16.”

36. Section 7 of the Consumer Fraud Act, Iowa Code § 714.16(7), provides in pertinent part:

If it appears to the attorney general that a person has engaged in, is engaging in, or is about to engage in a practice declared to be unlawful by this section, the attorney general may seek and obtain in an action in a district court a temporary restraining order, preliminary injunction, or permanent injunction prohibiting the person from continuing the practice or engaging in the practice or doing an act in furtherance of the practice. The court may make orders or judgments as necessary to prevent the use or employment by a person of any prohibited practices, or which are necessary to restore to any person in interest any moneys...which have been acquired by means of a practice declared to be unlawful by this section. ...

In addition to the remedies otherwise provided for in this subsection, the attorney general may request and the court may impose a civil penalty not to exceed forty thousand dollars per violation against a person found by the court to have engaged in a method, act, or practice declared unlawful under this section; provided, however, a course of conduct shall not be considered to be separate and different violations merely because the conduct is repeated to more than one person. ...

37. In addition, pursuant to Iowa Code § 714.16A(1), “[i]f a person violates section 714.16, and the violation is committed against an older person, in an action brought by the attorney general, in addition to any other civil penalty, the court may impose an additional civil penalty not to exceed five thousand dollars for each such violation.”

38. Section 11 of the Consumer Fraud Act, Iowa Code § 714.16(11), provides that “[i]n an action brought under this section, the attorney general is entitled to recover costs of the court action and any investigation which may have been conducted, including reasonable attorneys’ fees, for the use of this state.”

**PRAYER FOR RELIEF- COUNT II**

**WHEREFORE**, the Plaintiff respectfully requests this Court to issue an Order:

A. Finding that Defendant EQUIFAX INC. has violated Iowa Code Ch. 715C and Iowa Code Section 714.16, by engaging in the unlawful acts and practices herein;

B. Ordering Defendant to pay up to \$40,000 per deceptive act or unfair practice and an additional amount of \$40,000 for each act or practice found to have been committed with intent to defraud, as provided in Sections 715C(9)(a) and 714.16(7).

C. Assessing an additional civil penalty in the amount of \$5,000 per violation of the Consumer Fraud Act found by the Court to have been committed by Defendant EQUIFAX INC. against a person 65 years of age and older as provided in Iowa Code § 714.16A(1).

D. Requiring the Defendant EQUIFAX INC. to pay all costs for the prosecution and investigation of this action, as provided by Section 714.16(11).

E. Permanently enjoining Defendant EQUIFAX INC. from engaging in the aforementioned acts, practices, methods of competition or any other practice in violation of Section 714.16(7).

F. Providing any such other and further relief as the Court deems just, proper, and equitable under the circumstances.

Respectfully submitted,

Thomas J. Miller  
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