

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

<p>State Employees Federal Credit Union, individually and on behalf of a class of similarly situated credit unions, and the Wisconsin Credit Union League, as an association on behalf of its members,</p> <p style="text-align: right;">Plaintiffs,</p> <p>v.</p> <p>Equifax Inc.,</p> <p style="text-align: right;">Defendant.</p>	<p>COMPLAINT</p> <p>JURY TRIAL DEMANDED</p> <p>CIVIL ACTION NO: _____</p>
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Plaintiff State Employees Federal Credit Union (“SEFCU”), and the Wisconsin Credit Union League (“Plaintiffs”) by and through their undersigned counsel, individually and on behalf of a class of similarly situated credit unions, and credit union associations, file this Class Action Complaint against Defendant Equifax, Inc. (“Equifax”), and state the following:

INTRODUCTION

1. This litigation stems from the largest data breach in history of a financial services industry gatekeeper charged with one primary task:

collecting and maintaining consumers' most sensitive personal and financial information.

2. That company – Equifax – utterly failed at this task, allowing hackers to breach the gates and gain unfettered access to the sensitive information of millions. In so doing, Equifax set off a chain reaction that threatens the trustworthiness and stability of the financial system for individuals and institutions alike.

3. Equifax is one of the largest consumer credit reporting agencies in the United States. Equifax gathers, analyzes, and maintains credit-reporting information on over 820 million individual consumers and over 91 million businesses.

4. On September 7, 2017, Equifax announced that hackers had exploited a vulnerability in Equifax's U.S. website to illegally gain access to consumer files.¹

5. Equifax must now be held accountable for its failures and for a cybersecurity incident so massive that it could prove detrimental to overall American economic growth.

¹ Equifax, *Cybersecurity Incident & Important Consumer Information* (Sept. 8, 2017), <https://www.equifaxsecurity2017.com/>.

PARTIES

CREDIT UNION PLAINTIFF

6. Plaintiff State Employees Federal Credit Union (**SEFCU**) is a Federal credit union with its principal place of business at 575 Broadway, Albany, New York. SEFCU was officially chartered in 1934. It has more than \$3 billion in assets, operates 47 locations throughout the State of New York, and has over 330,000 members. It is regulated by the National Credit Union Administration (NCUA) as a federally insured, federally-chartered credit union.

ASSOCIATION PLAINTIFF

7. Plaintiff the Wisconsin Credit Union League is a Wisconsin non-stock corporation whose members are credit unions located in Wisconsin. The Wisconsin Credit Union League brings this action as an association on behalf of its 131 member credit unions. The Wisconsin Credit Union League has standing to assert its claims because: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the Wisconsin Credit Union League's purpose; and (c) the relief the Wisconsin Credit Union League seeks does not require participation of its members. *See Common Cause/GA v. Billips*, 406 F. Supp. 2d 1326, 1355 (N.D. Ga. 2005) (quoting *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167 (2000)).

8. The Wisconsin Credit Union League's members were damaged as a result of the data breach and likely will suffer further damage if another data

breach occurs. The Wisconsin Credit Union League is a non-class plaintiff, and while the members have themselves been injured by the data breach, it does not seek monetary damages. Instead, the Wisconsin Credit Union League brings this action for equitable relief on behalf of its members.

9. Defendant Equifax, Inc. is a publicly traded corporation with its principal place of business at 1550 Peachtree Street NE, Atlanta, Georgia.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d). At least one class member (SEFCU) is of diverse citizenship from Defendants, there are more than 100 class members, and the aggregate amount in controversy exceeds \$5 million, before interest and costs.

11. This Court may exercise personal jurisdiction over Equifax because Equifax has sufficient minimum contacts in Georgia. Specifically, Equifax’s principal place of business is in Georgia, and Equifax regularly conducts business throughout the state, including advertising and selling products and services within Georgia.

12. Venue is proper in this District and division under 28 U.S.C. § 1391(a) because Equifax’s principal place of business is in Georgia, and

a substantial part of Equifax's acts and omissions giving rise to the allegations in this Complaint occurred in this District.

FACTUAL ALLEGATIONS

Background

1. Equifax is one of the largest consumer credit reporting agencies in the United States, and it is the oldest of the three major U.S. credit-reporting agencies. Equifax has over \$3 billion in annual revenue, and its common stock is traded on the New York Stock Exchange.

2. Equifax gathers and maintains credit-reporting information on over 820 million individual consumers and over 91 million businesses.

3. For consumer files, Equifax collects a substantial amount of sensitive personal information. Equifax's consumer credit files include individuals' names, current and past addresses, birth dates, social security numbers, and telephone numbers; credit account information, including the institution name, type of account, date the account was opened, payment history, credit limit, and balance; credit inquiry information, including credit applications; and public-record information, including liens, judgments, and bankruptcy filings.

4. Equifax analyzes the information that it collects and generates consumer credit reports, which it sells to businesses like retailers,

insurance companies, utility companies, banks and financial institutions, and government agencies.

5. Equifax also provides services to consumers, including credit monitoring and identity-theft-protection products. Additionally, Equifax is required by law to provide one free annual credit report to consumers.

6. Equifax has an obligation to consumers to use every reasonable measure to protect the sensitive consumer information that it collects from exposure to hackers and identity thieves.

Equifax Data Breach

7. From as early as March to late July of 2017, hackers exploited a vulnerability in Equifax's U.S. web server software to illegally gain access to certain consumer files. Investigators believe that the point of entry may have been a software application called Apache Struts.²

8. The potential vulnerability of the Apache Strut software was no secret. Security researchers with Cisco Systems Inc. warned in March 2017 that a flaw in the Apache Struts software was being exploited in a "high number" of cyber attacks. Despite this warning, Equifax continued

² AnnaMaria Androtis et al., *Equifax Hack Leaves Consumers, Financial Firms Scrambling*, WALL STREET JOURNAL, Sept. 8, 2017, available at <https://www.wsj.com/articles/equifax-hack-leaves-consumers-financial-firms-scrambling-1504906993>

to use the software. And Equifax was reportedly using an outdated version of Apache Struts at the time of the data breach.³

9. Over this nearly three-month period, the Equifax hackers accessed consumer names, social security numbers, birth dates, addresses, and driver's license numbers. The compromised data contains complete profiles of consumers whose personal information was collected and maintained by Equifax.

10. Equifax originally estimated that 143 million Americans were impacted by this breach, although it admitted that it was still in the process of "conducting a comprehensive forensic review" with a cybersecurity firm "to determine the scope of the intrusion."⁴

11. On October 2, 2017, Equifax revealed that the cyber security firm Mandiant had completed its analysis of the data breach, and determined that an additional 2.5 million consumers may have been compromised. This brings the total number of impacted consumers to 145.5 million.⁵

³ *Id.*

⁴ Equifax, *Cybersecurity Incident & Important Consumer Information* (Sept. 8, 2017), <https://www.equifaxsecurity2017.com/>.

⁵ Hamza Shaban, *Equifax says 2.5 million more may have been swept up in massive data breach*, Washington Post (Oct. 2, 2017) https://www.washingtonpost.com/news/the-switch/wp/2017/10/02/equifax-says-2-5-million-more-may-have-been-swept-up-in-massive-data-breach/?utm_term=.875506267bff

12. In addition to accessing sensitive personal information, the hackers also accessed an estimated 209,000 consumer credit card numbers, and an estimated 182,000 dispute records containing additional personal information were compromised.⁶

13. Equifax reportedly discovered this breach on July 29, 2017.⁷

14. After Equifax discovered this breach but before Equifax disclosed the breach to the public, three high-level executives sold shares in the company worth nearly \$1.8 million.⁸ On August 1, just three days after Equifax discovered the breach, Equifax Chief Financial Officer John Gamble sold \$946,374 worth of stock, and President of U.S. Information Solutions Joseph Loughran exercised options to sell \$584,099 worth of stock. The next day, President of Workforce Solutions, Rodolfo Ploder, sold \$250,458 worth of stock.

15. Equifax did not report this breach to the public until September 7, 2017. Equifax has not explained its delay in reporting this breach to the public.

⁶ *Id.*

⁷ *Id.*

⁸ Anders Melin, *Three Equifax Managers Sold Stock Before Cyber Hack Revealed*, BLOOMBERG (Sept. 7, 2017), available at <https://www.bloomberg.com/news/articles/2017-09-07/three-equifax-executives-sold-stock-before-revealing-cyber-hack>.

16. On September 9, 2017, Equifax began inadvertently directing potential victims to a fake phishing website via the company's Twitter account.⁹

17. Since the breach was publicly revealed, federal regulators have said that they are examining Equifax's actions. The FBI is also investigating the breach,¹⁰ and at least three congressional committees announced that they would hold hearings.¹¹

18. Upon information and belief, although almost five months have passed since Equifax discovered the breach, the investigation is still ongoing, and the identity of the hackers is still unknown.

19. This breach is one of the largest data breaches in history, due to both the number of people exposed and the sensitivity of the information compromised. As reported by the Wall Street Journal, "[t]he Equifax hack is potentially the most dangerous of all, though, because the attackers

⁹ Brett Molina, *Equifax support team sent victims of breach to fake site*, USA Today (Sept. 21, 2017), available at <https://www.usatoday.com/story/tech/talkingtech/2017/09/21/equifax-support-team-sent-victims-breach-phishing-site/688188001/>.

¹⁰ Androtis, *supra*.

¹¹ Grace Donnelly, *Former Equifax CEO Rick Smith will appear before three congressional hearings this week*, Fortune (Oct. 3, 2017) available at <http://fortune.com/2017/10/03/how-to-watch-equifax-hearing/>.

were able to gain vast quantities of personal identification – names, addresses, Social Security numbers and dates of birth – at one time.”¹²

20. The Equifax breach is unique because many consumers may not be aware that their personal information was compromised. Equifax obtains its credit reporting information from banks, credit unions, credit card issuers, retailers, lenders, and public records. Accordingly, many consumers are not aware that Equifax or other reporting companies are collecting or retaining their sensitive personal information.

Consumers and Financial Institutions Are Harmed by the Breach

21. Initial reports indicate that hackers accessed credit card information of over 200,000 U.S. consumers in this breach. Identity thieves can use these numbers to make fake credit cards, which can then be sold or used to make unauthorized purchases that are then charged to a member’s¹³ or customer’s account.

22. Additionally, sensitive personal and financial information like the information compromised in this breach is extremely valuable to thieves and hackers. These criminals have gained access to complete profiles of individuals’ personal and financial information. They can then

¹² Androtis, *supra*.

¹³ Credit unions are wholly owned by their members and provide financial services to those members.

use these data sets to steal the identities of the consumers whose information has been compromised or sell it to others who plan to do so. The identity thieves can assume these consumers' identities (or create entirely new identities from scratch) to make transactions or purchases, open credit or bank accounts, apply for loans, forge checks, commit immigration fraud, obtain a driver's license in the member's or customer's name, obtain government benefits, or file a fraudulent tax return.

23. When identity thieves fraudulently use a victim's personal information, the victim frequently suffers financial consequences. A 2014 Department of Justice report on identity theft reported that 65% of identity theft victims experienced direct or indirect financial losses. In addition to the damage caused to consumers, credit unions and banks ultimately bear significant additional losses, as they typically indemnify their customers or members for fraudulent charges.

24. When sensitive personal information is compromised, consumers must exercise constant vigilance on their financial and personal records to ensure that fraudulent activity has not occurred. Consumers are forced to spend additional time monitoring their credit and finances as well as dealing with any potentially fraudulent activity.

In turn, the banks and credit unions where these consumers bank must do the same.

25. Consumers also face significant emotional distress after theft of their identity. The fear of financial harm can cause significant stress and anxiety for many consumers. According to the Department of Justice, an estimated 36% of identity theft victims experienced moderate or severe emotional distress as a result of the crime.¹⁴ This stress can also impact financial institutions, which are forced to expend additional customer service resources helping their stressed customers. Customers experiencing severe anxiety related to identity theft are often hesitant to use some banking services altogether, instead opting to use cash. As a result, financial institutions forgo many of the transaction fees, ATM fees, interest, or other charges that they may have otherwise collected on these accounts.

26. Financial institutions – both those used by legitimate consumers and those used by identity thieves – also feel the financial impact of identity theft.

¹⁴ *Id.*

27. When credit or debit card information is compromised, issuers face significant costs in cancelling and reissuing those payment cards to members or customers. Cancelling the compromised card numbers and reissuing new credit cards to their members or customers is the only way financial institutions can ensure accounts are not charged for unauthorized purchases. Some consumers even change or close their accounts in the wake of the fraud, resulting in additional cost and lost profits to the financial institution.

28. Moreover, financial institutions like SEFCU are responsible for any fraudulent activity on their members' accounts. When fraudulent charges are made to members' or customers' existing (legitimate) accounts, financial institutions largely bear the cost of indemnifying these charges. For instance, when a member reports fraudulent activity on a credit or debit card, SEFCU must credit back to its member the amount of any fraudulent charge. Yet SEFCU has no recourse to recover the charge against the retailer or merchant where the fraudulent purchase was made.

29. Financial institutions face even larger costs associated with entirely new accounts created by identity thieves. With the complete data sets that hackers have now acquired from the Equifax breach, criminals

can use these stolen identities or create a new identity from scratch. They can then use this identity to apply for new lines of credit, loans, or other accounts with financial institutions.

30. Financial institutions are responsible for *all* charges to these fraudulently opened accounts. The losses associated with these newly opened accounts only increase over time. When complete consumer profiles have been compromised, financial institutions experience continuous losses as identity thieves move on from one consumer profile to the next. With a breach of this magnitude, there is virtually no limit to the amount of fraudulent account openings financial institutions may face.

31. These risks are very real in the wake of the Equifax breach. These financial institutions and their members' or customers' information has been compromised as part of the Equifax breach. Because of this breach, for example, SEFCU's pre-approval offers for loans, and credit cards have been compromised.

32. As a result, financial institutions face considerable costs associated with monitoring, preventing, and responding to fraudulent charges and account openings. Financial institutions must implement additional fraud monitoring and protection measures, investigate

potentially fraudulent activity, and indemnify members or customers for fraudulent charges. Financial institutions will also need to take other necessary steps to protect themselves and their members or customers, including notifying members or customers, as appropriate, that their accounts may have been compromised. These burdens impact credit unions, who frequently serve individual and small business customers.

33. Financial institutions will also face increased regulatory compliance costs going forward as a result of this incident. Federal regulators have already begun considering the implications of the breach and are likely to implement additional requirements to protect consumers from the financial risks associated with this breach. For example, additional reports and plans will likely be required to satisfy regulators. Financial institutions will be required to directly bear the costs of these additional measures.

34. Financial institutions are also concerned about the chilling effect this breach may have on future lending as consumers deal with the impact of the breach on their finances and credit, as well as on their emotional wellbeing. Customers or members are often without access to their accounts for several days at a time while credit or debit cards are replaced or accounts are changed. Additionally, some customers are

hesitant to use card transactions altogether in the wake of a major breach. This results in lost fees and interest to the financial institutions issuing these cards.

35. Equifax had a duty to properly secure its website from hackers, to use available technology to encrypt and otherwise secure consumers' personal information using industry standard methods, and to act reasonably to prevent the foreseeable harm to Plaintiff and the Class, which it knew would result from a data breach.

36. Indeed, Equifax's role as a credit-reporting firm made the need for it to secure the information it held especially acute. And that role has itself created an additional burden for financial institutions, who have typically relied on the files at credit-reporting agencies like Equifax to determine whether applications for consumer credit or loans are creditworthy. Not only has that process now been thrown into jeopardy for SEFCU, and the financial institutions it seeks to represent, but also such financial institutions are now without a vital source of verifying consumers' identities due to the extent of the personal and financial information compromised by the Equifax breach.¹⁵

¹⁵ See Telis Demos, *Equifax Hack Could Slow Down Fast Loans*, WALL STREET JOURNAL (Sept. 11, 2017), available at <https://www.wsj.com/articles/equifax-hack-could-slow-down-fast-loans-1505147969>.

37. For all of these reasons, the breach has sent shockwaves throughout the entire financial services industry, and its reverberations will be felt for years to come.

The Breach was the Result of Equifax’s Failure to Properly and Adequately Secure its U.S. Website

38. The Equifax breach was the direct result of Equifax’s failure to properly and adequately secure its U.S. website. Former Chairman and CEO of Equifax, Richard F. Smith, confirmed that “the breach occurred because of both human error and technology failures,” which are directly attributable to Equifax.¹⁶

39. Specifically, Equifax failed to heed warnings from security experts about the vulnerabilities in its Apache Struts software – warnings, along with a fix, that were available since March 7, 2017.¹⁷ Additionally, Equifax failed to update this software to its latest version.

40. Equifax admitted in public statements that hackers were able to access this data by exploiting a vulnerability in Equifax’s U.S. website application to illegally gain access to consumer files.

¹⁶ *Oversight of the Equifax Data Breach: Answers for Consumers: Hearing before the Subcomm. on Digital Commerce and Consumer Protection of the H. Comm. on Energy and Commerce*, 115th Cong. 2 (2017) (Prepared Testimony of Richard F. Smith).

¹⁷ Struts, <http://struts.apache.org/announce.html#a20170307-2> (last visited Oct. 6, 2017).

41. Equifax should have recognized and identified the flaws in its data security and should have taken measures to fix these vulnerabilities. Equifax had a duty to take advantage of what experts had already learned about security vulnerabilities and to use industry best practices, such as updating software to the latest version, to prevent a security breach.

42. Even before this incident, Equifax was on notice of potential problems with its web security. A security researcher has reported that in August, hackers claimed to have illegally obtained credit-card information from Equifax, which they were attempting to sell in an online database.¹⁸ Equifax had a duty to respond to a report of a significant software security flaw. Despite Equifax's knowledge of these potential security threats, Equifax willfully (or at least negligently) failed to enact appropriate measures to ensure the security of its consumer files, including failing to encrypt sensitive personal and financial consumer information.

¹⁸ Androtis, *supra.*; See also, Thomas Fox-Brewster, *A Brief History of Equifax Security Fails*, FORBES, Sept. 8, 2017, available at: <https://www.forbes.com/sites/thomasbrewster/2017/09/08/equifax-data-breach-history/#63dc4270677c>.

43. The harm to consumers and financial institutions as a result of Equifax's failure to adequately secure its computer systems and websites was therefore foreseeable to Equifax.

44. Equifax is well aware of the costs and risks associated with identity theft. On its website, Equifax lists "some of the ways identity theft might happen," including when identity thieves "steal electronic records through a data breach."

How Does Identity Theft Happen?

Identity thieves have gotten more sophisticated in their methods. The following includes some of the ways identity theft may happen:

- Steal wallets or purses in order to obtain identification, credit and bank cards;
- Dig through mail and trash in search of bank and credit card statements, preapproved credit card offers, tax information and other documents that may contain personal details;
- Fill out change-of-address forms to forward mail, which generally contains personal and financial information;
- Buy personal information from an inside, third party source, such as a company employee who has access to applications for credit;
- Obtain personnel records from a victim's place of employment;
- "Skim" information from an ATM — this is done through an electronic device, which is attached to the ATM, that can steal the information stored on a credit or debit card's magnetic strip;
- Swipe personal information that has been shared on unsecured websites or public Wi-Fi;
- Steal electronic records through a data breach;
- "Phish" for electronic information with phony emails, text messages and websites that are solely designed to steal sensitive information;
- Pose as a home buyer during open houses in order to gain access to sensitive information casually stored in unlocked drawers.

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45. In fact, Equifax has published a report on the "Emotional Toll of Identity Theft." In its report, Equifax states that "identity theft victims may experience similar emotional effects as victims of violent crimes, ranging from anxiety to emotional volatility." The report also cites a survey finding that "69 percent felt fear for personal financial security; 50

¹⁹ Equifax, *How Does Identity Theft Happen?*, <https://www.equifax.com/personal/education/identity-theft/how-does-identity-theft-happen> (last accessed September 10, 2017).

percent of respondents said they had feelings of powerlessness or helplessness; and 29 percent said they felt shame or embarrassment.”²⁰

46. Financial institutions are on the front lines following a data breach, working with these consumers when identity theft does occur, increasing the cost to financial institutions, including credit unions, whose customer bases are usually comprised of individuals and small businesses.

47. Because Equifax is aware of the negative consequences of identity theft, Equifax also offers products aimed at protecting consumers from identity theft. For example, Equifax advertises its “Equifax Complete™ Premier Plan” as “Our Most Comprehensive Credit Monitoring and Identity Protection Product.”²¹ The product promises to alert consumers of changes to their credit score and credit report provide text message alerts to changes, lock the consumer’s credit file by unapproved third parties, and automatically scan suspicious websites for consumers’ personal information.

²⁰ Equifax, *A Lasting Impact: The Emotional Toll of Identity Theft*, Feb. 2015, available at https://www.equifax.com/assets/PSOL/15-9814_psol_emotionalToll_wp.pdf.

²¹ Equifax, *Equifax Complete™ Premier Plan: Our Most Comprehensive Credit Monitoring and Identity Protection Product*, <https://www.equifax.com/personal/products/credit/monitoring-and-reports> (last accessed Sept. 10, 2017).

48. Equifax was aware of the risk posed by its insecure and vulnerable website. It was also aware of the extraordinarily sensitive nature of the personal information that it maintains as well as the resulting impact that a breach would have on consumers and financial institutions – including Plaintiff and the other class members.

Equifax Had a Duty to Prevent and Timely Report this Breach

49. Equifax had a duty to prevent breach of consumers' sensitive personal information.

50. Following several high-profile data breaches in recent years, including Target, Home Depot, Yahoo, and Sony, Equifax was on notice of the very real risk that hackers could exploit vulnerabilities in its data security. Moreover, Equifax has considerable resources to devote to ensuring adequate data security.

51. Nonetheless, Equifax failed to invest in adequate cyber security measures to properly secure its U.S. website from the threat of hackers.

52. Consumers and financial institutions were harmed not only by the breach itself but also by Equifax's failure to timely report this breach to the public.

53. Equifax discovered this breach on July 29, 2017, but did not report it to the public until nearly six weeks later on September 7, 2017.

54. According to the Wall Street Journal, an anonymous source familiar with the investigation states that “Equifax executives decided to hold off on informing the public until they had more clarity on the number of people affected and the types of information that were compromised.”²² In the time between when Equifax discovered this breach and when it reported the breach to the public, however, three of its top executives were able to sell – and sold – substantial sums of stock in the company, presumably avoiding the financial losses associated with the negative press Equifax has received since the breach.²³

55. Because of this delay, consumers with compromised personal information and credit card information have been unable to adequately protect themselves from potential identity theft for several months.

56. Financial institutions have also been unable to alert their members or customers of the risk in a timely manner, or to implement measures to detect and prevent potential fraud in the time before the breach was disclosed.

²² Androtis, *supra*.

²³ Equifax’s stock prices dropped almost 15% the day after the breach was publicly announced – the largest decline in nearly two decades. Ben Eisen, *Equifax Shares on Pace for Worst Day in 18 Years*, WALL STREET JOURNAL (Sept. 8, 2017), available at <https://blogs.wsj.com/moneybeat/2017/09/08/equifax-shares-on-pace-for-worst-day-in-18-years/>.

57. This resulted in additional harm to Plaintiffs, the Class, and consumers that they would not have suffered if Equifax had not delayed in reporting the breach to the public.

CLASS ACTION ALLEGATIONS

58. Plaintiff SEFCU bring this action on behalf of themselves and as a class action under Federal Rules of Civil Procedure 23(a), (b)(2), and (b)(3), on behalf of the following class:

Credit unions in the United States (including its Territories and the District of Columbia) that issue payment cards or perform, facilitate, or support other banking products and services, whose customers' and members' personal information was collected or amassed by Equifax and compromised in the 2017 breach of Equifax's U.S. website (the "CU Class").

59. Plaintiff is a member of the CU Class, as defined above.

60. The members of the CU Class are readily ascertainable, and Equifax likely has access to addresses and other contact information that may be used for providing notice to CU Class members.

61. Certification of Plaintiff's claims for class-wide treatment is appropriate because Plaintiff can prove the elements of its claims on a class-wide basis using the same evidence as would be used in individual actions alleging the same claims.

62. This action has been brought and may be properly maintained on behalf of the class proposed herein under Federal Rule of Civil Procedure 23 and satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of its provisions.

Class Certification Requirements

63. *Numerosity: Federal Rule of Civil Procedure 23(a)(1)*. The CU Class members are so numerous and geographically dispersed that individual joinder of all class members is impracticable. As of the first quarter of 2017, in the United States, there were 5,737 credit unions with more than 100 million members, with 1.34 trillion in assets.²⁴ The Court and all parties will benefit substantially from a single lawsuit that addresses all of the class members' claims in this case. Class members will be easily identifiable from publicly-available records, such as NCUA records of federal and state chartered credit unions. Class members may be notified of this action by recognized, court-approved methods of dissemination, which may include U.S. mail, electronic mail, Internet postings, and/or published notice.

²⁴ 2015 Statistical Report, World Council of Credit Unions (Sept. 11, 2017). http://www.woccu.org/impact/global_reach/statreport.

64. *Commonality and Predominance: Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3)*. Common questions of law and fact in this case predominate over questions affecting individual CU Class members. Common factual and legal questions include, but are not limited to:
- (a) whether Equifax failed to provide adequate security and/or protection on its websites that contained sensitive consumer information;
 - (b) whether Equifax's conduct resulted in the breach of its U.S. website and the exposure of consumers' sensitive information;
 - (c) whether Equifax notified the public of this breach in a timely manner;
 - (d) whether Equifax failed to encrypt sensitive consumer information;
 - (e) whether Equifax's actions were negligent;
 - (f) whether Equifax owed a duty to Plaintiff and the Class;
 - (g) whether the harm to Plaintiff and the Class was foreseeable;
 - (h) whether Plaintiff and the Class are entitled to injunctive relief; and

- (i) whether Plaintiff and the Class are entitled to damages, and the amount of such damages.

65. *Typicality: Federal Rule of Civil Procedure 23(a)(3)*. Plaintiff's claims are typical of the other CU Class members' claims because all class members were comparably injured through Equifax's negligence as described in detail above. All credit unions will face the same costs associated with this breach, as described above. The factual bases of these claims are common to all class members.

66. *Adequacy: Federal Rule of Civil Procedure 23(a)(4)*. Plaintiff SEFCU is an adequate class representative because its interests do not conflict with the interests of the other members of the CU Class it seeks to represent. Plaintiff SEFCU has retained counsel who are competent and experienced in complex class action litigation. Moreover, Plaintiff SEFCU intends to prosecute this action vigorously. Plaintiff SEFCU and its counsel will fairly and adequately protect the class's interests in this case.

67. *Declaratory and Injunctive Relief: Federal Rule of Civil Procedure 23(b)(2)*. Equifax has acted or refused to act on grounds generally applicable to Plaintiff SEFCU and the other members of the class. Accordingly, final injunctive relief and declaratory relief, as described below, is appropriate with respect to the CU Class as a whole.

68. *Superiority: Federal Rule of Civil Procedure 23(b)(3)*. A class action is superior to any other available means for the fair and efficient adjudication of this case. No unusual difficulties are likely to arise in the management of this class action. The damages that Plaintiff and the other class members suffered are relatively small compared to the burden and expense required to litigate their claims individually. Accordingly, it would be impracticable for class members to seek redress individually from Equifax.

69. Even if CU Class members could afford the relatively high cost of individual litigation, the court system could not. Individual litigation creates the potential for inconsistent or contradictory judgments. It also increases the delay and expense to all parties and the court system. By comparison, a class action presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

70. Moreover, separate individual actions create the risk of different courts imposing different and incompatible standards of conduct on Equifax. This creates needless duplication and prolonged proceedings, and is inappropriate because common legal and factual questions predominate over individual questions.

CAUSES OF ACTION

Count I
Negligence

(On Behalf of SEFCU and the Class)

71. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

72. Defendant owed a duty to Plaintiff and the Class to exercise reasonable care and diligence in obtaining, processing, and retaining Plaintiff's members' sensitive personal information and credit card numbers.

73. Defendant owed a duty to Plaintiff and the Class to adequately secure consumers' personal and financial information.

74. Defendant breached this duty by: (1) failing to properly secure its U.S. website from intrusion by a third party; (2) allowing a third party to exploit a vulnerability in this website and access consumers' sensitive personal and financial information; (3) failing to detect this breach for several weeks; and (4) failing to notify consumers of this breach for nearly six weeks.

75. Defendant knew or should have known of the risks associated with potential vulnerabilities in its websites and computer systems.

76. Defendant knew or should have known that its failure to take reasonable measures to secure these websites and computer systems against obvious risks would result in harm to Plaintiff and the Class.

77. As a direct and proximate result of Defendant's negligence, Plaintiff and the Class have suffered substantial damages. Upon information and belief, these damages include, but are not limited to, the cost of cancelling and reissuing credit cards to members or customers of Plaintiff and the Class, changing or closing member or customer accounts, notifying members or customers that their accounts may have been compromised, implementing additional fraud monitoring and protection measures, investigating potentially fraudulent activity, indemnifying members or customers for fraudulent charges, unwinding or absorbing charges to fraudulently-opened new credit accounts of varying kinds, complying with additional regulatory requirements imposed as a result of the breach, and taking other necessary steps to protect themselves and their members or customers. Upon information and belief, Plaintiff and the Class also lost profits as a result of their members or customers being unwilling or unable to use their credit cards following the breach.

Count II
Negligence *Per Se*

(On Behalf of SEFCU and the Class)

78. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

79. Equifax's failure to adequately safeguard consumers' sensitive personal information and credit cards numbers from data breach constitutes negligence *per se* because this conduct violates Section 5 of the Federal Trade Commission ("FTC") Act.²⁵

80. The FTC Act exists to "prevent persons, partnerships, or corporations . . . from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce."

81. The FTC has interpreted Section 5 of the FTC Act to include the unfair practice of failing to maintain reasonable security for members' or customers' sensitive or personal information.

82. As part of its duties under the FTC Act, the FTC "has brought legal actions against organizations that have violated consumers' privacy

²⁵ 15 U.S.C. §§ 41 *et seq.*

rights, or misled them by failing to maintain security for sensitive consumer information.”²⁶

83. Accordingly, Equifax violated Section 5 of the FTC Act by failing to use reasonable security measures to adequately protect its consumers’ sensitive personal information.

84. Plaintiff and the Class are within the group of persons Section 5 of the FTC Act was designed to protect, because Plaintiff and the Class are responsible for indemnifying members or customers for fraudulent charges. Additionally, some Class members (including Plaintiff) are credit unions, which are organized as cooperatives whose members are consumers.

85. As a direct and proximate result of Defendant’s violation of Section 5 of the FTC Act, Plaintiff and the Class have suffered substantial damages. Upon information and belief, these damages include, but are not limited to, the cost of cancelling and reissuing credit cards to members or customers of Plaintiff and the Class, changing or closing member or customer accounts, notifying members or customers that their accounts may have been compromised, implementing additional fraud

²⁶ Federal Trade Commission, *Enforcing Privacy Promises*, <https://www.ftc.gov/news-events/media-resources/protecting-consumer-privacy/enforcing-privacy-promises> (last accessed Sept. 10, 2017).

monitoring and protection measures, investigating potentially fraudulent activity, indemnifying members or customers for fraudulent charges, unwinding or absorbing charges to fraudulently-opened accounts, complying with additional regulatory requirements imposed as a result of the breach, and taking other necessary steps to protect themselves and their members or customers. Upon information and belief, Plaintiff and the Class also lost profits because their members or customers were unwilling or unable to use their credit cards following the breach.

Count III
Declaratory and Injunctive Relief

(On Behalf of All Plaintiffs)

86. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

87. Plaintiffs and the Class are entitled to a declaratory judgment under the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.* The Declaratory Judgment Act authorizes this Court to enter a declaratory judgment stating the rights and legal relations of the parties and grant further relief if necessary. Additionally, the Court has authority to enjoin tortious acts or acts in violation of federal or state statute.

88. Plaintiffs and the Class contend that Equifax's data security measures were inadequate to protect consumers' sensitive personal

information. Upon information and belief, these data security measures remain inadequate. Plaintiffs and the Class will continue to suffer injury unless this is rectified.

89. Plaintiffs and the Class seek a declaratory judgment stating that Equifax owed and continues to owe a duty to adequately and appropriately secure consumers' sensitive personal and financial information, and that Equifax has a duty to timely disclose to the public any breach of that data; that Equifax breached and continues to breach this duty by failing to adequately secure its websites and computer systems containing members' or customers' sensitive personal and financial information; Equifax's breach of this duty caused the data breach which occurred between mid-May and late-June of 2017; and Plaintiffs and the Class were forced to incur the costs of cancelling and reissuing credit cards to members or customers of Plaintiffs and the Class, changing or closing member or customer accounts, notifying members or customers that their accounts may have been compromised, implementing additional fraud monitoring and protection measures, investigating potentially fraudulent activity, indemnifying members or customers for fraudulent charges, charges to fraudulently-opened accounts, complying with additional regulatory requirements imposed as

a result of the breach, and taking other necessary steps to protect themselves and their members or customers.

90. Plaintiffs and the Class also seek corresponding injunctive relief requiring Equifax to use adequate security measures to protect its websites and computer systems from attacks by hackers and to prevent future unauthorized access of consumers' sensitive personal and financial information.

91. If injunctive relief is not granted, Plaintiffs and the Class will suffer irreparable injury and will not have an adequate legal remedy in the event of future data breaches. Many of the injuries resulting from these breaches are not easily quantifiable, and Plaintiffs and the Class will be forced to bring multiple additional lawsuits.

92. The burden to Plaintiffs and the Class is far greater than the burden to Equifax if the Court does not issue an injunction. The cost of improving data security and applying reasonable measures to protect consumer data should be minimal, particularly given the nature of Equifax's business and its considerable financial resources. Equifax *already* has a duty to provide these protections. If future data breaches occur, though, upon information and belief, Plaintiffs and the Class will suffer further financial losses associated with cancelling and reissuing

credit cards to members or customers of Plaintiffs and the Class, changing or closing member or customer accounts, notifying members or customers that their accounts may have been compromised, implementing additional fraud monitoring and protection measures, investigating potentially fraudulent activity, indemnifying members or customers for fraudulent charges, charges to fraudulently-opened accounts, complying with additional regulatory requirements imposed as a result of the breach, and taking other necessary steps to protect themselves and their members or customers.

93. Such an injunction would benefit the public by decreasing the risk of future Equifax data breaches, eliminating potential future injuries that would result from another breach.

94. Plaintiffs and Class members, therefore, request the injunctive and declaratory relief detailed above.

95. The Wisconsin Credit Union League is participating in this lawsuit on behalf of its members. It seeks, where its members are entitled to do so and the claims otherwise permit, the declaratory and injunctive relief requested above on behalf of its members who will continue to suffer as a result of Equifax's conduct unless stopped.

RELIEF REQUESTED

Plaintiff SEFCU, individually and on behalf of the Class, and the Wisconsin Credit Union League, respectfully request that the Court enter judgment in its favor and against Equifax Inc. as follows:

- A. Certification of the proposed class, including appointment of SEFCU's counsel as class counsel;
- B. An order temporarily and permanently enjoining Equifax from the negligent business practices alleged in this Complaint;
- C. Actual and consequential damages in an amount to be determined at trial;
- D. Other damages as permitted by applicable laws;
- E. Pre- and post-judgment interest on any amounts awarded;
- F. Costs and attorneys' fees; and
- G. Such other or further relief as may be appropriate.

December 12, 2017

Robins Kaplan LLP

By: /s/ James Kitces
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Attorneys for Plaintiffs

CIVIL COVER SHEET

The JS44 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 is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

I. (a) PLAINTIFF(S)

State Employees Federal Credit Union, individually and on behalf of a class of similarly situated credit unions, and the Wisconsin Credit Union League, as an association on behalf of its members

DEFENDANT(S)

Equifax, Inc.
1550 Peachtree Street NE
Atlanta, GA 30309

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY)

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

(c) ATTORNEYS (FIRM NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS)

Stacey P. Slaughter, James Kitces
Robins Kaplan, LLP
800 LaSalle Avenue, Suite 2800
Minneapolis, MN 55402
(612) 349-8500

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) (FOR DIVERSITY CASES ONLY)

- PLF DEF PLF DEF
1 1 CITIZEN OF THIS STATE 4 4 INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE
2 2 CITIZEN OF ANOTHER STATE 5 5 INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE
3 3 CITIZEN OR SUBJECT OF A FOREIGN COUNTRY 6 6 FOREIGN NATION

IV. 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 District)
6 MULTIDISTRICT LITIGATION - TRANSFER
7 APPEAL TO DISTRICT JUDGE FROM MAGISTRATE JUDGE JUDGMENT
8 MULTIDISTRICT LITIGATION - DIRECT FILE

V. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE - DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Negligence under the Class Action Fairness Act, 28 U.S.C. §1332(d).

(IF COMPLEX, CHECK REASON BELOW)

- 1. Unusually large number of parties.
2. Unusually large number of claims or defenses.
3. Factual issues are exceptionally complex.
4. Greater than normal volume of evidence.
5. Extended discovery period is needed.
6. Problems locating or preserving evidence.
7. Pending parallel investigations or actions by government.
8. Multiple use of experts.
9. Need for discovery outside United States boundaries.
10. Existence of highly technical issues and proof.

CONTINUED ON REVERSE

FOR OFFICE USE ONLY

RECEIPT # AMOUNT \$ APPLYING IFP MAG. JUDGE (IFP)
JUDGE MAG. JUDGE (Referral) NATURE OF SUIT CAUSE OF ACTION

VI. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT - "0" MONTHS DISCOVERY TRACK

- 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- 152 RECOVERY OF DEFAULTED STUDENT LOANS (Excl. Veterans)
- 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS

CONTRACT - "4" MONTHS DISCOVERY TRACK

- 110 INSURANCE
- 120 MARINE
- 130 MILLER ACT
- 140 NEGOTIABLE INSTRUMENT
- 151 MEDICARE ACT
- 160 STOCKHOLDERS' SUITS
- 190 OTHER CONTRACT
- 195 CONTRACT PRODUCT LIABILITY
- 196 FRANCHISE

REAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 210 LAND CONDEMNATION
- 220 FORECLOSURE
- 230 RENT LEASE & EJECTMENT
- 240 TORTS TO LAND
- 245 TORT PRODUCT LIABILITY
- 290 ALL OTHER REAL PROPERTY

TORTS - PERSONAL INJURY - "4" MONTHS DISCOVERY TRACK

- 310 AIRPLANE
- 315 AIRPLANE PRODUCT LIABILITY
- 320 ASSAULT, LIBEL & SLANDER
- 330 FEDERAL EMPLOYERS' LIABILITY
- 340 MARINE
- 345 MARINE PRODUCT LIABILITY
- 350 MOTOR VEHICLE
- 355 MOTOR VEHICLE PRODUCT LIABILITY
- 360 OTHER PERSONAL INJURY
- 362 PERSONAL INJURY - MEDICAL MALPRACTICE
- 365 PERSONAL INJURY - PRODUCT LIABILITY
- 367 PERSONAL INJURY - HEALTH CARE/ PHARMACEUTICAL PRODUCT LIABILITY
- 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

TORTS - PERSONAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 370 OTHER FRAUD
- 371 TRUTH IN LENDING
- 380 OTHER PERSONAL PROPERTY DAMAGE
- 385 PROPERTY DAMAGE PRODUCT LIABILITY

BANKRUPTCY - "0" MONTHS DISCOVERY TRACK

- 422 APPEAL 28 USC 158
- 423 WITHDRAWAL 28 USC 157

CIVIL RIGHTS - "4" MONTHS DISCOVERY TRACK

- 440 OTHER CIVIL RIGHTS
- 441 VOTING
- 442 EMPLOYMENT
- 443 HOUSING/ ACCOMMODATIONS
- 445 AMERICANS with DISABILITIES - Employment
- 446 AMERICANS with DISABILITIES - Other
- 448 EDUCATION

IMMIGRATION - "0" MONTHS DISCOVERY TRACK

- 462 NATURALIZATION APPLICATION
- 465 OTHER IMMIGRATION ACTIONS

PRISONER PETITIONS - "0" MONTHS DISCOVERY TRACK

- 463 HABEAS CORPUS- Alien Detainee
- 510 MOTIONS TO VACATE SENTENCE
- 530 HABEAS CORPUS
- 535 HABEAS CORPUS DEATH PENALTY
- 540 MANDAMUS & OTHER
- 550 CIVIL RIGHTS - Filed Pro se
- 555 PRISON CONDITION(S) - Filed Pro se
- 560 CIVIL DETAINEE: CONDITIONS OF CONFINEMENT

PRISONER PETITIONS - "4" MONTHS DISCOVERY TRACK

- 550 CIVIL RIGHTS - Filed by Counsel
- 555 PRISON CONDITION(S) - Filed by Counsel

FORFEITURE/PENALTY - "4" MONTHS DISCOVERY TRACK

- 625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
- 690 OTHER

LABOR - "4" MONTHS DISCOVERY TRACK

- 710 FAIR LABOR STANDARDS ACT
- 720 LABOR/MGMT. RELATIONS
- 740 RAILWAY LABOR ACT
- 751 FAMILY and MEDICAL LEAVE ACT
- 790 OTHER LABOR LITIGATION
- 791 EMPL. RET. INC. SECURITY ACT

PROPERTY RIGHTS - "4" MONTHS DISCOVERY TRACK

- 820 COPYRIGHTS
- 840 TRADEMARK

PROPERTY RIGHTS - "8" MONTHS DISCOVERY TRACK

- 830 PATENT
- 835 PATENT-ABBREVIATED NEW DRUG APPLICATIONS (ANDA) - a/k/a Hatch-Waxman cases

SOCIAL SECURITY - "0" MONTHS DISCOVERY TRACK

- 861 HIA (1395f)
- 862 BLACK LUNG (923)
- 863 DIWC (405(g))
- 863 DIWW (405(g))
- 864 SSID TITLE XVI
- 865 RSI (405(g))

FEDERAL TAX SUITS - "4" MONTHS DISCOVERY TRACK

- 870 TAXES (U.S. Plaintiff or Defendant)
- 871 IRS - THIRD PARTY 26 USC 7609

OTHER STATUTES - "4" MONTHS DISCOVERY TRACK

- 375 FALSE CLAIMS ACT
- 376 Qui Tam 31 USC 3729(a)
- 400 STATE REAPPORTIONMENT
- 430 BANKS AND BANKING
- 450 COMMERCE/ICC RATES/ETC.
- 460 DEPORTATION
- 470 RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
- 480 CONSUMER CREDIT
- 490 CABLE/SATELLITE TV
- 890 OTHER STATUTORY ACTIONS
- 891 AGRICULTURAL ACTS
- 893 ENVIRONMENTAL MATTERS
- 895 FREEDOM OF INFORMATION ACT
- 899 ADMINISTRATIVE PROCEDURES ACT / REVIEW OR APPEAL OF AGENCY DECISION
- 950 CONSTITUTIONALITY OF STATE STATUTES

OTHER STATUTES - "8" MONTHS DISCOVERY TRACK

- 410 ANTI-TRUST
- 850 SECURITIES / COMMODITIES / EXCHANGE

OTHER STATUTES - "0" MONTHS DISCOVERY TRACK

- 896 ARBITRATION (Confirm / Vacate / Order / Modify)

*** PLEASE NOTE DISCOVERY TRACK FOR EACH CASE TYPE. SEE LOCAL RULE 26.3**

VII. REQUESTED IN COMPLAINT:

CHECK IF CLASS ACTION UNDER F.R.Civ.P. 23 DEMAND \$ \$5,000,000

JURY DEMAND YES NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)

VIII. RELATED/REFILED CASE(S) IF ANY

JUDGE Thomas W. Thrash DOCKET NO. 1:17-cv-03483-TWT

CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES: (CHECK APPROPRIATE BOX)

- 1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 2. SAME ISSUE OF FACT OR ARISES OUT OF THE SAME EVENT OR TRANSACTION INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 4. APPEALS ARISING OUT OF THE SAME BANKRUPTCY CASE AND ANY CASE RELATED THERETO WHICH HAVE BEEN DECIDED BY THE SAME BANKRUPTCY JUDGE.
- 5. REPETITIVE CASES FILED BY PRO SE LITIGANTS.
- 6. COMPANION OR RELATED CASE TO CASE(S) BEING SIMULTANEOUSLY FILED (INCLUDE ABBREVIATED STYLE OF OTHER CASE(S)):

7. EITHER SAME OR ALL OF THE PARTIES AND ISSUES IN THIS CASE WERE PREVIOUSLY INVOLVED IN CASE NO. _____, WHICH WAS DISMISSED. This case IS IS NOT (check one box) SUBSTANTIALLY THE SAME CASE.

/s/ James Kitces

12/12/2017

SIGNATURE OF ATTORNEY OF RECORD

DATE