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TIMOTHY C. FOX
Montana Attorney General
MARK MATTIOLI
Bureau Chief
KELLEY HUBBARD
Assistant Attorney General
P.O. Box 200151
555 Fuller Ave.
Helena, MT 59620-0151
(406) 444-2026
mmattioli@mt.gov
khubbard@mt.gov

ANGIE SPARKS, Clerk of District Court
By ~~AMBER M MULLEN~~ Deputy Clerk

MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS & CLARK COUNTY

STATE OF MONTANA,

Plaintiff,

v.

EQUIFAX INC.,

Defendant.

NO. CDV-2019-993

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

NOW COMES Plaintiff, THE STATE OF MONTANA, by TIMOTHY C. FOX,, Attorney General of the State of MONTANA, bringing this action complaining of Defendant EQUIFAX INC. (“Equifax” or “Defendant”) for violations of Parts I and 17 of the Montana Unfair Trade Practices and Consumer Protection Act, Mont Code Annotated §§ 30-14-101 to 144; 30-14-1701 to 1736., and states as follows:

PUBLIC INTEREST

1. The Montana Attorney General believes this action to be in the public interest of the citizens of the State of Montana and brings this lawsuit pursuant Parts I and 17 of the Montana

Unfair Trade Practices and Consumer Protection Act, Mont Code Annotated §§ 30-14-101 to 144; 30-14-1701 to 1736.

JURISDICTION AND VENUE

2. This action is brought for and on behalf of THE PEOPLE OF THE STATE OF MONTANA, by TIMOTHY C. FOX, Attorney General of the State of MONTANA, pursuant to the provisions of Parts I and 17 of the Montana Unfair Trade Practices and Consumer Protection Act, Mont Code Annotated §§ 30-14-101 to 144; 30-14-1701 to 1736., and HIS common law authority as Attorney General to represent the People of the State of MONTANA.

3. Venue for this action properly lies in LEWIS & CLARK County, MONTANA, pursuant to Montana Code Annotated §§ 30-14-111 (3) and 30-14-1705.

4. This court has jurisdiction over this matter pursuant to Montana Code Annotated §§ 30-14-111 (3) and 30-14-1705.

THE PARTIES

5. Plaintiff, THE STATE OF MONTANA, by TIMOTHY C. FOX, Attorney General of the State of MONTANA, is charged, *inter alia*, with the enforcement of Parts I and 17 of the Montana Unfair Trade Practices and Consumer Protection Act, Mont Code Annotated §§ 30-14-101 to 144; 30-14-1701 to -1736.

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 MONTANA Secretary of State as an active foreign business corporation, effective August 13, 1919.

TRADE AND COMMERCE

7. Montana Code Annotated Section § 30-14-102 (1) defines “trade” and “commerce” as follows:

“Trade” and “commerce” mean the advertising, offering for sale, sale, or distribution of any services, any property, tangible or intangible, real, personal, or mixed, or any other article, commodity, or thing of value, wherever situated, and includes any trade or commerce directly or indirectly affecting the people of this state.

The defendant was at all times relevant hereto engaged in trade and commerce in the State of MONTANA 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. 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.

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

12. 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.

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

14. 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.

15. 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.

16. 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.

17. 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

18. 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.

19. 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.

20. 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.

21. 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.

With that total, approximately 380,441 are MONTANA 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.

22. 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.

23. Equifax subsequently extended credit monitoring for another year for affected consumers.

24. 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.

**Count I – VIOLATIONS OF PART 1 OF THE MONTANA UNFAIR TRADE
PRACTICES AND CONSUMER PROTECTION ACT(MUTPCA)**

25. The Plaintiff incorporates paragraphs 1 through 24 as if they are fully alleged herein.

26. The Defendant's practices, as set forth above, constitute unfair or deceptive trade practices in the sale and offer for sale of consumer services in violation of Montana Code Annotated § 30-14-103.

27. The Defendant's false and misleading statements to consumers regarding its data protection practices have had the capacity, tendency or effect of deceiving or misleading consumers and constitute unfair or deceptive trade practices within the meaning of Montana Code Annotated § 30-14-103.

28. The Defendant's failure to adequately inform consumers regarding its data protection practices constitute a failure to state material facts, the omission of which has deceived or tended to deceive consumers, as set forth above, constitute unfair or deceptive trade practices within the meaning of Montana Code Annotated § 30-14-103.

29. The Defendant's practice of failing to take reasonable steps to protection consumers' personal information and subsequent data breach caused substantial harm to consumers, that consumers could not reasonably avoid, and which did not benefit the marketplace or competition, making it an unfair trade practice pursuant to Montana Code Annotated § 30-14-103.

COUNT II-IMPEDIMENT OF IDENTITY THEFT

30. The Plaintiff alleges paragraphs 1 through 29 as if they are fully alleged herein.

31. The Defendant collects, owns and/or licenses the personal information of consumers residing in Montana.

32. The Defendant has violated Part 17 of the MUTPCA, Montana Code Annotated §§ 30-14-1701 to 30-14-1736, by failing to implement and maintain reasonable security measures

to protect records that contain personal information concerning Montana consumers from unauthorized access, use, modification, or disclosure.

33. The Defendant's failure to take reasonable steps to protect consumers' personal information constitutes unfair or deceptive trade practices that violate Parts 1 and 17 of the MUTPCA.

WHEREFORE, the Plaintiff respectfully requests that the Court enter an Order and Judgment:

- (a) Requiring the Defendant to cease and desist from engaging in unfair or deceptive trade practices in violation of the Montana law, including, without limitation, Parts 1 and 17 of the MUTPCA;
- (b) Requiring the Defendant to take affirmative action, including the payment of restitution to consumers;
- (c) Requiring the Defendant to pay economic damages;
- (d) Requiring the Defendant to pay the costs of this proceeding, including all costs of investigation;
- (e) Requiring the Defendant to pay a suitable civil penalty pursuant to Montana Code Annotated §§ 30-14-142 and 144; and 30-17-1705(3); and

(f) Granting such other and further relief as is appropriate, necessary, or equitable.

Respectfully submitted this 22nd day of July, 2019.

TIMOTHY C. FOX
Montana Attorney General



MARK MATTIOLI
Bureau Chief