

Velva L. Price
District Clerk
Travis County
D-1-GN-19-004173
Carrisa Stiles

NO. D-1-GN-19-004173

STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
EQUIFAX INC.,	§	
Defendant.	§	201ST JUDICIAL DISTRICT

PLAINTIFF’S ORIGINAL PETITION

Plaintiff, THE STATE OF TEXAS, acting by and through Attorney General Ken Paxton brings this action complaining of Defendant EQUIFAX INC. (“Equifax” or “Defendant”) for violations of the Texas Deceptive Trade Practices – Consumer Protection Act, TEX. BUS. & COM. CODE ANN. §§ 17.41-17.63 (“DTPA”) and the Texas Identity Theft Enforcement and Protection Act, TEX. BUS. & COM. CODE ANN. Ch. 521 (“ITEPA”), and states as follows:

PUBLIC INTEREST

1. Plaintiff has reason to believe that Defendant has engaged in the unlawful practices set forth below. Therefore, the Consumer Protection Division of the Office of the Attorney General of Texas believes these proceedings are in the public interest.

JURISDICTION AND VENUE

2. This action is brought by the Attorney General of Texas, through his Consumer Protection Division, in the name of the STATE OF TEXAS and in the public interest, pursuant to the authority granted by the Texas Deceptive Trade Practices – Consumer Protection Act, TEX. BUS. & COM. CODE ANN. §§ 17.41 *et seq.* (“DTPA”) and the Texas Identity Theft Enforcement and Protection Act, TEX. BUS. & COM. CODE ANN. Chapter 521 (“ITEPA”), and his common law authority as Attorney General to represent the State of Texas.

3. Venue for this action lies in Travis County, Texas, pursuant to DTPA § 17.47(b).

4. This court has jurisdiction over this matter pursuant to DTPA § 17.47.

THE PARTIES

5. Plaintiff, the STATE OF TEXAS is represented by its Attorney General Ken Paxton acting through his Consumer Protection Division.

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 Texas Secretary of State as an active foreign business corporation, effective on October 31, 2002.

TRADE AND COMMERCE

7. Subsection 17.45(6) of the DTPA defines “trade” and “commerce” as follows:

The terms ‘trade’ and ‘commerce’ mean the advertising, offering for sale, sale, lease, or distribution of any good or service, of any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value, wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this state.

Defendant was at all times relevant hereto engaged in trade and commerce in the State of Texas 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:

- a. Personal Information, such as: name, date of birth, current and past addresses, name of current and past employers, and Social Security number;
- b. Credit History, such as information on 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;
- c. 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;
- d. Public Records, including bankruptcies, tax liens, and civil judgments; and
- e. Personal Statements, 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 on 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 a total of approximately 148 million U.S. consumers affected by the breach.

Within that total, approximately 12.2 million are Texas 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 consisted 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 for another year for affected consumers.

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 DECEPTIVE TRADE 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.

CAUSES OF ACTION

27. The STATE OF TEXAS incorporates paragraphs 1 through 26 as if fully alleged herein.

28. The STATE OF TEXAS alleges that Defendant has, in the conduct of trade or commerce, engaged in false, misleading or deceptive act or practice declared unlawful under Sections 17.46(a) and (b) of the DTPA by:

- (A) 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; and
- (B) 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, including 12.2 million Texans.

29. The STATE OF TEXAS further alleges that Defendant owns and/or licenses the personal information of consumers residing in Texas and has violated ITEPA by failing to implement and maintain reasonable security measures to protect records that contain personal information of Texas residents from unauthorized access, acquisition, destruction, use, modification, or disclosure.

PRAYER

WHEREFORE, the Plaintiff respectfully requests that this Honorable Court issue an Order:

- A. Finding that Defendant has violated §§ 17.46(a) and (b) of the DTPA by engaging in the unlawful acts and practices alleged herein;
- B. Finding that Defendant has violated ITEPA § 521.052(a) by engaging in the unlawful acts and practices alleged herein;
- C. Requiring Defendant to pay a civil penalty of up to \$20,000 per violation of the DTPA as authorized by § 17.47(c)(1) of the DTPA;
- D. Requiring Defendant to pay an additional penalty of at least \$2,000 but not more than \$50,000 for each violation of ITEPA as authorized by § 521.151(a) of the ITEPA;
- E. Requiring Defendant to take further affirmative action, including the payment of restitution to consumers;
- F. Requiring Defendant to pay all attorney's fees and costs for the prosecution and investigation of this action, as authorized by § 402.006(c) of the Texas Gov't Code;
- G. Permanently enjoining Defendant from engaging in the aforementioned acts, practices, methods of competition or any other practice in violation of the DTPA or

ITEPA, such injunctive relief being authorized by § 17.47(a) of the DTPA and § 521.151(b) of the ITEPA; and

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

Respectfully submitted,

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Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

DARREN L. MCCARTY
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PAUL SINGER
Chief, Consumer Protection Division

/s/ D. Esther Chavez
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ATTORNEYS FOR THE STATE OF TEXAS