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Richard F. Smith
Chairman and CEO
Equifax
P.O. Box 740256
Atlanta, GA 30348

September 8, 2017

Dear Mr. Smith:

Public Citizen represents the public interest through lobbying, litigation, administrative advocacy, research, and public education on a broad range of issues, including consumer rights in the marketplace. On behalf of our 400,000 members and supporters, we write to urge you to remove clauses included in the TrustedID Premier Terms of Use that are aimed at shielding you from liability for claims arising out of a scandal of your own making.

Yesterday, Equifax announced that the personal data of about 143 million consumers may have been hacked. The information accessed primarily includes names, Social Security numbers, birth dates, addresses and, in some instances, driver's license numbers. In addition, credit card numbers for approximately 209,000 U.S. consumers, and certain dispute documents with personal identifying information for approximately 182,000 U.S. consumers were accessed. The hack is "shaping up to be one of the largest of all time."¹

Although Equifax established a dedicated website to help consumers determine if their information has been impacted, buried in the TrustedID Premier Terms of Use are two egregious clauses aimed at shielding Equifax from liability. First, the terms of use includes a limitation on liability clause that gives broad immunity to TrustedID, an Equifax company, for claims against the company. Second, the terms of use includes a clause that pushes all claims into binding individual arbitration and prevents consumers from banding together in a class action against the company.² In effect, Equifax is requiring consumers to sign away their legal rights as a condition for free credit monitoring for a situation that consumers did not create. A late-added, difficult-to-invoke opt-out option for the forced arbitration provision does not meaningfully remedy the situation.

¹ TechCrunch, "Equifax Data Breach Held Site Leaves Consumers with More Questions than Answers," *available at* <https://techcrunch.com/2017/09/07/equifax-data-breach-help-site-leaves-consumers-with-more-questions-than-answers/?ncid=mobilnavtrend> (Sept. 7, 2017).

² TrustedID Terms of Use, *available at* <https://trustedidpremier.com/static/terms>.

Moreover, Equifax.com's terms of use purport to force arbitration on consumers of Equifax products, potentially including millions of those affected by the breach, the vast majority of whom will have no idea that they were forced to consent to such terms.

Forced arbitration clauses deprive people of their day in court when they are harmed by violations of the law. Instead, people are forced into biased, secretive arbitration proceedings with no right to appeal if arbitrators ignore the facts or law. When forced arbitration clauses are combined with class action bans, neither judges nor arbitrators can assess or remedy the full scope of wrongdoing that affects multiple victims.

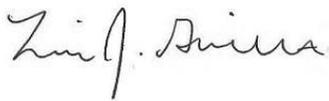
The use of forced arbitration clauses by Wells Fargo is illustrative. Countless media have reported how the bank used binding arbitration clauses to force consumers into secretive proceedings, thereby delaying public knowledge of the massive scandal. Forcing consumers into secretive proceedings will shield Equifax from accountability for their own actions. The Consumer Financial Protection Bureau (CFPB) recently restored consumers' right to join together in holding financial institutions – including credit bureaus – accountable when they break the law. While the rule is not yet in effect, it is the result of a congressional directive to address the harm that forced arbitration causes consumers.

Equifax should immediately disavow any intent to trick consumers into giving up their rights, and should eliminate these provisions from the agreements it is offering consumers—including from agreements consumers may already have rushed to enter into as a result of the anxiety provoked by Equifax's sudden, belated announcement of the breach.

And, we have grave concerns about how the company will try to deploy the forced arbitration provisions buried in the Equifax.com terms of use.

Consumers should be receiving assistance and remedial action from Equifax rather than a bald-faced attempt to shield the company from liability. We urge you to immediately amend the TrustedID Premier Terms of Use to remove the clauses that would shield Equifax from accountability to consumers, and to agree to waive any claims to force Equifax.com customers into arbitration for claims related to the breach.

Sincerely,



Lisa Gilbert
Vice President for Legislative Affairs
Public Citizen
Congress Watch Division



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Counsel for Civil Justice and Consumer Rights
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Cc:
John J. Kelly III
Corporate Vice President and Chief Legal Officer