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August 13, 2019

Mr. Andrew Katsaros  
Inspector General  
Federal Trade Commission  
600 Pennsylvania Avenue NW  
Washington, DC 20580

Dear Mr. Katsaros:

I write to request that you conduct an investigation into the Federal Trade Commission's (FTC) misleading public descriptions of the benefits available under its settlement with Equifax.

On September 7, 2017, Equifax revealed that the company had exposed the sensitive personal information of more than 145 million Americans in one of the most significant data security lapses in history.<sup>1</sup> Subsequent investigations and public reporting revealed the extent of Equifax's failures, including the company's failure to heed warnings of risks; its flawed data security; its failure to notify consumers, investors, and regulators in a timely fashion; its efforts to profit off the breach; and its shoddy, ineffective assistance to consumers in the wake of the breach.<sup>2</sup>

On July 22, 2019, the FTC announced that Equifax had agreed to pay between \$575 and \$700 million in a global settlement between the FTC, the Consumer Financial Protection Bureau (CFPB), 50 U.S. states and territories, and the company.<sup>3</sup> The settlement includes \$300 million for a fund "to provide affected consumers with credit monitoring services," as well as an additional \$125 million if the initial payment "is not enough to compensate consumers for their losses."<sup>4</sup>

The terms of the settlement indicate that in addition to payments to consumers for specific, demonstrated losses, every single individual affected by the breach is entitled to either: (a) four years of enrollment in "identity theft insurance and Full Service Identity Restoration Services"; or (b) an "Alternative Reimbursement Compensation of up to" \$125.<sup>5</sup> But the settlement allots

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<sup>1</sup> See Elizabeth Warren, "Bad Credit: Uncovering Equifax's Failure to Protect Americans' Personal Information," February 2018, [https://www.warren.senate.gov/files/documents/2018\\_2\\_7\\_%20Equifax\\_Report.pdf](https://www.warren.senate.gov/files/documents/2018_2_7_%20Equifax_Report.pdf).

<sup>2</sup> See *id.*

<sup>3</sup> Federal Trade Commission, "Equifax to Pay \$575 Million as Part of Settlement with FTC, CFPB, and States Related to 2017 Data Breach," July 22, 2019, *Archived*, <https://web.archive.org/web/20190722153106/https://www.ftc.gov/news-events/press-releases/2019/07/equifax-pay-575-million-part-settlement-ftc-cfpb-states-related>.

<sup>4</sup> *Id.*

<sup>5</sup> United States District Court for the Northern District of Georgia, "Stipulated Order for Permanent Injunction and Monetary Judgement," July 22, 2019,

only \$31 million for this Alternative Reimbursement Compensation, and states that if valid claims for this compensation exceed this amount, then payments “shall be reduced on a *pro rata* basis”<sup>6</sup> – and the agency appeared to misinform consumers by failing to tell them about these potential reductions until after they had signed up for the payments.

In a statement posted on the same day as the settlement on the FTC website, entitled “Equifax Data Breach Settlement,” the FTC claimed that once the claims process begins, consumers can request either “free credit monitoring OR \$125 if you decide not to enroll.”<sup>7</sup> In an infographic that was first posted on the FTC’s website as early as July 25, 2019, and remained unchanged through at least August 6, 2019, the FTC says consumers can “sign up for free credit monitoring for up to 10 years OR get a cash payment of \$125 for credit monitoring you already have.”<sup>8</sup> These pages did not inform consumers that the cash payment was subject to – and in fact, was very likely to be – severely reduced. As of today, the infographic on the FTC website now does not even mention the possibility of consumers receiving the \$125 payment.<sup>9</sup>

This is because the \$31 million set aside for compensation would pay exactly 248,000 individuals the maximum of \$125 in alternative reimbursement compensation payment - less than 1% of the 145 million individuals affected by the breach.

The FTC and Equifax set up a website to give consumers the opportunity to claim their benefits from the settlement. But after millions of consumers flooded the site and requested a cash payment, the FTC modified its initial advice and recommended that consumers take the free credit reporting option, claiming on their website that “each person who takes the money option is going to get a very small amount. Nowhere near the \$125 they could have gotten if there hadn’t been such an enormous number of claims filed.”<sup>10</sup> The FTC now specifically says that the “free credit monitoring provides a much better value,” and adds that “you will be disappointed with the amount you receive” if you choose the cash option.<sup>11</sup>

The FTC has the authority to investigate and protect the public from unfair or deceptive acts or practices, including deceptive advertising. Unfortunately, it appears as though the agency itself

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[https://web.archive.org/web/20190722213806/https://www.ftc.gov/system/files/documents/cases/172\\_3203\\_eqifax\\_proposed\\_order\\_7-22-19.pdf](https://web.archive.org/web/20190722213806/https://www.ftc.gov/system/files/documents/cases/172_3203_eqifax_proposed_order_7-22-19.pdf).

<sup>6</sup> *Id.*

<sup>7</sup> Federal Trade Commission, “Equifax Data Breach Settlement,” July 2019, *Archived*, <https://web.archive.org/web/20190722141759/https://www.ftc.gov/enforcement/cases-proceedings/refunds/equifax-data-breach-settlement>.

<sup>8</sup> Federal Trade Commission, “Infographic: Equifax Data Breach Settlement,” *Archived* July 22, 2019, <https://web.archive.org/web/20190725160005/https://www.consumer.ftc.gov/articles/infographic-equifax-data-breach-settlement>. The webpage included this language when reviewed by the staff of Senator Elizabeth Warren on August 6, 2019.

<sup>9</sup> Federal Trade Commission, “Infographic: Equifax Data Breach Settlement,” <https://www.consumer.ftc.gov/articles/infographic-equifax-data-breach-settlement>.


<sup>10</sup> Federal Trade Commission, “Equifax Data Breach Settlement,” July 2019, *Archived*, <https://web.archive.org/web/20190722141759/https://www.ftc.gov/enforcement/cases-proceedings/refunds/equifax-data-breach-settlement>.

<sup>11</sup> Federal Trade Commission, “Equifax Data Breach Settlement,” August 2019, <https://www.ftc.gov/enforcement/cases-proceedings/refunds/equifax-data-breach-settlement>.

may have misled the American public about the terms of the Equifax settlement and their ability to obtain the full reimbursement to which they are entitled. To determine how the FTC made a series of decisions that will result in millions of Americans receiving only a small amount of the \$125 they believe they are owed as remuneration for Equifax's failures, I ask that you conduct an investigation into the terms of and FTC's public description of the settlement with Equifax. As part of that investigation, I ask that you address the following questions.

1. Prior to or immediately after the settlement, did the FTC have any estimate of how many consumers would select the Alternative Reimbursement Compensation? If so, how did the FTC arrive at that estimate?
2. Why did the FTC choose to notify the public of "a cash payment of \$125" rather than clarifying, as it did after many members of the public claimed the payment, that it could be reduced depending on how many individuals claimed it?
3. Which individuals or offices at the FTC are responsible for the two specific misleading notifications identified in this letter on the agency website? Would such individuals or office be subject to, and potentially in violation of Section 5 of the FTC Act's provisions against unfair or deceptive acts or practices?
4. In addition to the two specific misleading notifications described above, did the FTC make any other statements or take any other action that resulted in potentially misleading the public about the size of the cash payments to which they are entitled?
5. What communications did the FTC have with Equifax or other government agencies prior to and regarding your announcement of the compensation available to consumers, specifically the alternative reimbursement compensation of up to \$125?

Sincerely,



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Elizabeth Warren  
United States Senator