

# Meet the Lawyer Suing Equifax and Apple

Scott Cole is an Alameda attorney on a crusade against corporate malfeasance. Why take on just one giant and not two?

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In September, the credit bureau **Equifax** revealed that a data breach exposed 143 million people to potential credit fraud — and that the company had known about it for weeks before taking action. In that time, several executives unloaded their company stock, and when Equifax finally tried making amends, it did so by feigning contrition and trying to trick people into forfeiting their right to a class-action lawsuit. It was, and is, maddening.

Enter **Scott Cole**, a class-action attorney who specializes in employment- and environmental-law cases and whose firm, Scott Cole & Associates is located in Alameda. Cole is well-known among his peers for his work in the 1994 case in which Crockett, Calif., sued Unocal over weeks of toxic emissions that left the East Bay town a well-known cancer cluster. (The company currently exists only as a subsidiary of Chevron.) Cole's forthcoming book *Fallout* chronicles this history.

The opportunity a lawsuit against Equifax presents could have similarly far-reaching consequences, not only in terms of financial restitution for the millions of people who may have to obsessively monitor their credit scores far into the future, but in terms of holding financial giants accountable when they commit wrongdoings on this dizzying scale.

As the Trump administration has chosen to defang the Consumer Financial Protection Bureau, it may be up to dogged lawyers and various state attorneys general to make sure justice is served. Cole's track record is good: He estimates he's been involved in 300 class-action cases over his 26-year career, winning money for plaintiffs and ensuring that companies treat workers fairly. He's had minimum-wage workers receive checks for tens of thousands of dollars.

Yet, as he freely admits, class-action attorneys are not widely considered heroes. It's not so much that ordinary people are skeptical of lawyers who splash their phone numbers on bus benches, or the ones who secure comparatively miniscule judgments for their clients while walking away with tens of millions in legal fees. Many legal scholars, including the eminent and recently retired judge **Richard Posner**, are wary of class-action lawsuits specifically because of their potential to bankrupt firms. Cole vociferously disagrees.

“I go back to the basic mantra,” Cole tells *SF Weekly* over lunch at Oakland’s Lake Chalet. “There’s no perfect system. Not to make it sound grandiose, but I do look at the work that we do and the presence of class-actions as being a watchdog, a way of providing checks and balances to a potentially corrupt system. It provides an incentive to be careful.”

Cole is in the early stages of a suit against Equifax, having flown several times to Atlanta, where the company’s headquarters are and where any courtroom drama will play out. Matters are, to say the least, complicated. Apart from jockeying among plaintiffs’ attorneys over who gets to lead the case, it might be litigated on a couple different tracks, one for individuals and the other for small businesses. There is reason to be optimistic that Equifax will lose a pretty penny making this right. But the case’s massiveness is shot through with a bright seam of cynicism, such that a judge in St. Louis asked a gaggle of litigators, “In what jurisdiction do you want this case to settle?”

In short, there is no precedent for litigation on this scale, and the sheer number of possible plaintiffs — 143 million people is essentially the entire U.S. labor force — means that even a \$100 judgment for everyone would total more than \$14 billion, enough to bankrupt even a titan like Equifax. In all likelihood, Cole says, the company will settle. But it will require a great deal of finesse to land this plane in the right way.

Compensation is but one part of the solution. The optimal outcome, Cole believes, would be to spook the industry into investing whatever it takes to prevent data breaches of this scale from ever happening again, thereby securing ordinary people’s financial lives. He’s reluctant to prognosticate, but a case of this magnitude has the potential to create enough momentum for legislative action — even with the GOP in control of Congress.

What’s especially fascinating — in a Grisham-esque courtroom-procedural way, anyway — is gaming out Equifax’s potential strategy. Do they delay, delay, delay? Perform internal investigations and let their rogue ex-employees out to dry, calling the breach the work of a few bad apples? Or will those people flip and betray their former employer? And what might the feds’ involvement be?

“To the extent that there are investigations going on, sometimes in class-action litigation you want to let that happen and then piggyback a little bit,” Cole says. “You can’t wait too long for that to happen, because we have litigation to prosecute — but there’s a lot of interaction between our work and government agencies.”

On top of this monster of a case, Cole has also brought suit against **Apple Inc.** over its admission that yes, updates do slow down old phones to compensate for the degradation of their batteries over time. Last December, the company offered anyone with an iPhone 6 or higher a \$50 discount on a replacement battery (reducing the price from \$79 to \$29) during any part of 2018. Not good enough, Cole says.

For starters, there are people who believe the warranty should cover the full cost of the battery replacement, while others may have upgraded multiple phones thinking that Apple’s throttling indicated they had outlived their utility.

“Something that’s a little less quantifiable is the inconvenience of having a phone that’s not performing at the level you’re expecting,” he adds.

Accuracy is crucial, but enumerating so many different sub-classes of people has risks, too. Apart from being a “procedural mess,” asking a judge to adjudicate based on different categories of damages means wading into the realm of speculation. Still, there have been more than 40 lawsuits filed regarding Apple’s admission, and it’s early yet.

In terms of a way forward, Cole believes the 1994 Unocal suit offers a promising template because of the broader social goals it achieved. Ethically, an attorney’s obligation is solely to his or her clients, but *Fallout* documents how adhering to a more expansive vision can achieve materially positive outcomes for a broader swath of people.

One of Cole's battles is the anti-arbitration movement, which aims to eliminate clauses in corporate contracts that tilt the scales in favor of companies. Granted, arbitration agreements also pre-empt class-action suits, so Cole has a personal stake interest in rolling them back. But, as he notes, "with forced arbitration, you've got an imbalance of power against a typical employee.

"I can tell you as a workers' rights lawyer, it's rare that I see a large company that doesn't have a forced-arbitration provision in its contract," he adds.

This was something **Sen. Al Franken** was involved with, and Hawaii Democratic **Sen. Brian Schatz** has expressed interest, as well. (Cole's firm's attempts to lobby California's own **Sen. Dianne Feinstein** went nowhere.)

It's wisdom Cole gleaned from his work on Unocal, where he saw people on all sides fighting dirty. Apart from the petroleum giant covering up the release of toxic fumes that sickened an entire town, some lawyers even attempted to buy other attorneys out, poaching clients in a high-profile case to enhance their own prestige. (It's hard to imagine the Bar Association tolerating that, but Cole says that with sufficient disclosure, it's permissible.) As a young litigator at the time, he was a fairly junior figure, stewing about the lack of local press coverage. But there were also inspiring stories of people who were "so tired of being dumped on, chemically and otherwise" fighting back.

It begs the question: Why wait nearly a quarter-century to write it? The answer is time, both in terms of finding the hours to get the job done and the political tenor of the current era — plus encouragement from his wife. *Fallout* sounds like the kind of book someone releases to coincide with the launch of a political career, but in light of films like *Erin Brockovich* or *A Civil Action*, the more pertinent question may be who will play Scott Cole in the movie version?

He demurs, saying he hasn't been in discussion with any agents. But *Fallout* is a compelling account, and the elevator pitch is there.

"People joining together and fighting back," Cole muses, "with the result of pushing a multibillion, multinational corporation out of town forever? That's a pretty cool story."