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21  
22 **UNITED STATES DISTRICT COURT**  
23 **NORTHERN DISTRICT OF CALIFORNIA**  
24 **SAN FRANCISCO DIVISION**

25 IN RE: 23ANDME, INC. CUSTOMER DATA  
26 SECURITY BREACH LITIGATION

No. 3:24-md-03098-EMC

27 This Document Relates to: ALL ACTIONS

28 **NOTICE OF MOTION AND MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

Judge: Hon. Edward M. Chen  
Courtroom: 5, 17<sup>th</sup> Floor  
Hearing Date: October 17, 2024  
Hearing Time: 1:30 p.m.

1 **TO THE COURT, THE PARTIES, AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on October 17, 2024, at 1:30 p.m. or as soon thereafter as  
3 counsel may be heard, before the Honorable Edward M. Chen, at the United States District Court for  
4 the Northern District of California, San Francisco Division, located at 450 Golden Gate Ave. San  
5 Francisco, CA 94102, Plaintiffs will and hereby do move this Court, pursuant to Federal Rule of Civil  
6 Procedure 23, for an order granting Plaintiffs’ Unopposed Motion for Preliminary Approval of Class  
7 Action Settlement.

8 Plaintiffs base their Motion for Preliminary Approval of Class Action Settlement on this Notice;  
9 the Memorandum of Points and Authorities filed in support thereof; the Settlement Agreement and  
10 Release (“Settlement Agreement”) and all exhibits attached thereto; the Declaration of Cari Campen  
11 Laufenberg, Norman E. Siegel and Gayle M. Blatt in Support of Plaintiffs’ Motion for Preliminary  
12 Approval of Class Action Settlement (“Class Counsel Decl.”); the Declaration of Carla A. Peak  
13 (“Admin. Decl.”) and all exhibits attached thereto; the Declaration of Gerald Thompson (“CyEx Decl.”)  
14 all other records and papers on file in this action; any oral argument on the Motion; and all other matters  
15 properly before the Court.

16 Plaintiffs seek an order pursuant to Federal Rule of Civil Procedure 23(b)(3) certifying the  
17 Settlement Class more fully described in the Settlement Agreement filed concurrently herewith;  
18 preliminarily approving the Settlement as fair, reasonable, and adequate; directing notice to be  
19 disseminated to the Settlement Class in the form and manner proposed by the parties as set forth in the  
20 Settlement Agreement and Exhibits 1-4 to the Admin. Decl.; appointing Verita to serve as the  
21 Settlement Administrator; appointing Plaintiffs as Class Representatives and the undersigned attorneys  
22 as Class Counsel; and setting a hearing date and schedule for final approval of the Settlement and  
23 consideration of Class Counsel’s forthcoming motion for an award of fees, costs, expenses, and service  
24 awards.

25 Dated: September 12, 2024

26 By: /s/ Gayle M. Blatt  
27 Gayle M. Blatt (SBN 122048)

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**CERTIFICATE OF SERVICE**

I, Cass L. Lazar, hereby certify that on September 12, 2024, I electronically filed the foregoing with the Clerk of the United States District Court for the Northern District of California using the CM/ECF system, which shall send electronic notification to all counsel of record.

*/s/ Cass L. Lazar*

\_\_\_\_\_  
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23 **UNITED STATES DISTRICT COURT**  
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26 IN RE: 23ANDME, INC. CUSTOMER DATA  
27 SECURITY BREACH LITIGATION

28 This Document Relates to: ALL ACTIONS

No. 3:24-md-03098-EMC

**MEMORANDUM IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

Judge: Hon. Edward M. Chen  
Courtroom: 5, 17<sup>th</sup> Floor  
Hearing Date: October 17, 2024  
Hearing Time: 1:30 p.m.

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**STATEMENT OF THE ISSUES TO BE DECIDED**

The issues to be decided on this Motion are:

1. Whether the proposed Settlement warrants preliminary approval;
2. Whether to certify this action as a class action for purposes of settlement;
3. Whether the Court should approve the Notice Plan, including the selection of Verita as Claims Administrator;
4. Whether the Court should set deadlines for Settlement Class Members to exercise their rights in connection with the proposed Settlement; and,
5. Whether the Court should schedule a Final Approval Hearing to determine whether the Settlement, Settlement Benefits Plan, forthcoming application for attorneys' fees and expenses, and request for Settlement Class Representatives' Service Awards should be finally approved.



## I. INTRODUCTION

1 The proposed Settlement Class Representatives<sup>1</sup> and Defendant 23andMe have reached a  
2 settlement that will create a non-reversionary Settlement Fund of \$30 million to provide substantial  
3 relief to Settlement Class Members. This is an outstanding result at an early juncture in the case and  
4 maximizes the relief available from a Defendant in an uncertain financial situation.  
5

6 The benefits provided by the Settlement Fund are carefully tailored to redress the harms faced  
7 by the victims of the 23andMe Security Incident announced in October 2023, which involved the  
8 release of Personal Information, including limited health information and ethnic and genetic  
9 information. *See* Dkt. 78, Consolidated Class Action Complaint (“Complaint” or “Compl.”). If the  
10 Settlement is approved, the benefits available to Settlement Class Members will provide: (1) monetary  
11 reimbursement for Extraordinary Claims up to \$10,000 for losses incurred as the direct result of the  
12 Security Incident, including expenses for identity fraud, the installation of physical security or  
13 monitoring systems, and professional mental health treatment; (2) cash payments for Settlement Class  
14 Members who were residents of states with genetic privacy laws providing for statutory damages  
15 (Alaska, California, Illinois, and Oregon); (3) cash payments for Settlement Class Members that had  
16 health information compromised in the Security Incident, and (4) three years of state of the art Privacy  
17 & Medical Shield + Genetic Monitoring (“Privacy Shield”) for all Settlement Class Members who  
18 enroll. Privacy Shield is a unique monitoring program with added components designed specifically  
19 for this Settlement that provides extensive benefits for victims of the Security Incident. Further, as part  
20 of the Settlement, 23andMe agreed to implement and maintain—at its own expense—important  
21 Business Practice Commitments, which will strengthen the security and protections of the Personal  
22 Information in its possession. These benefits are described more fully in the Settlement Benefits Plan  
23 (“SBP”) and below. In short, the Settlement addresses the central allegation of this Litigation and  
24 achieves key relief sought by Plaintiffs.<sup>2</sup>

25 Considering the substantial monetary and non-monetary benefits conferred upon Settlement

---

26 <sup>1</sup> The capitalized terms in this memorandum have the meaning set forth in the Settlement Agreement.

27 <sup>2</sup> While 23andMe denies Plaintiffs’ allegations, it has agreed to the Settlement Agreement and does not  
28 oppose this Motion.

1 Class Members and the significant risks faced through continued litigation including the financial  
 2 condition of the Defendant, the terms of the Settlement are “fair, reasonable, and adequate” in  
 3 accordance with Federal Rule of Civil Procedure 23(e)(2). Therefore, Plaintiffs respectfully request  
 4 the Court preliminarily approve the proposed Settlement, appoint Class Counsel and the Settlement  
 5 Class Representatives, authorize the provision of Notice to the Settlement Classes, and set a hearing  
 6 to consider final approval of the Settlement. In support of this Motion, Plaintiffs submit the Settlement  
 7 Agreement (“SA”) (Ex. A); an agreed proposed order granting preliminary approval (Ex. A-1); the  
 8 proposed Settlement Benefits Plan (“SBP”) (Ex. B); the Case Comparison Chart (Ex. C); Declaration  
 9 of Class Counsel (“Class Counsel Decl.”) (Ex. D); the Declaration of Carla A. Peak on behalf of the  
 10 proposed Notice and Claims Administrator including details of the Notice Program, attaching the  
 11 proposed Settlement Notices and Claim Form (“Admin. Decl.”) (Ex. E); and the Declaration of Gerald  
 12 Thompson on behalf of CyEx, the provider of Privacy Shield (“CyEx Decl.”) (Ex. F).

13 **II. THE SETTLEMENT IS THE RESULT OF ZEALOUS ADVOCACY**  
 14 **AND SKILLFUL NEGOTIATION**

15 The severity of this Security Incident combined with 23andMe’s challenging financial position  
 16 presented extraordinary challenges to achieving the Settlement, far beyond those in a typical data  
 17 breach MDL. Class Counsel Decl. ¶ 33. Even prior to the Security Incident and the resulting wave of  
 18 lawsuits now centralized in this Court, 23andMe’s financial condition was dire. Revenue and earnings  
 19 were in steep decline, and by September 2023 (a month before the Security Incident) its stock started  
 20 trading below \$1. Class Counsel Decl. ¶ 29. 23andMe’s financial issues were exacerbated by  
 21 revelation of the Security Incident, and by November 2023, 23andMe’s stock was no longer in  
 22 compliance with Nasdaq regulations that require listed stocks maintain a minimum bid price of \$1 per  
 23 share. *Id.* 23andMe had recently reported a substantial loss in the first half of its calendar year based  
 24 on declining revenue. The latest quarterly report revealed losses of \$69.4 million on revenue of only  
 25 \$40.4 million.<sup>3</sup> And as of September 10, 2024, 23andMe’s stock was trading at an all-time low of

26 \_\_\_\_\_  
 27 <sup>3</sup> 23andMe Holding Co., *Form 8-K* (Aug. 5, 2024), [https://www.sec.gov/Archives/edgar/  
 data/1804591/000180459124000045/me-20240808x8kxexx991.htm](https://www.sec.gov/Archives/edgar/data/1804591/000180459124000045/me-20240808x8kxexx991.htm).

1 \$0.30 a share resulting in a market capitalization of roughly \$151 million. Class Counsel Decl. ¶ 31.

2 Given 23andMe’s financial position, litigation exposure in this and other cases, and limited  
3 funds available, an early attempt at resolution was a rational path forward for the proposed Class. The  
4 Court recognized the precariousness of the situation for the Class and ordered Interim Co-Lead  
5 Counsel to “immediately upon appointment” arrange “for further mediation with Randy Wulff who is  
6 designated as mediator in this case[.]” Dkt. 62, Pretrial Order No. 2, ¶ 9. Following two mediation  
7 sessions prior to the appointment of Interim Co-Lead Counsel, on June 26, 2024, the Parties attended  
8 a third in-person mediation session with Mr. Wulff. After another lengthy arms-length session, the  
9 Parties were at an impasse. Mr. Wulff then presented a mediator’s proposal that was eventually  
10 accepted by both Parties. The Parties then turned to documenting the agreement under the terms and  
11 conditions set forth in the Settlement Agreement. As a condition of the Settlement, and in exchange  
12 for payment of the Settlement Fund, the Settlement Class Representatives, on behalf of the proposed  
13 Settlement Class, agreed to release their claims and all potential claims that could have been brought  
14 based on the identical factual predicate as those alleged in the Complaint.

15 **A. Brief Summary of the Litigation**

16 On August 11, 2023, a threat actor on the dark web claimed to have samples of 23andMe  
17 genetic user data for sale. Compl. ¶¶ 418-419. In early October 2023, a threat actor made available via  
18 a link to certain Personal Information, including the ethnicity information relating to data of one  
19 million 23andMe users with Ashkenazi Jewish DNA descent, and another 100,000 with Chinese DNA.  
20 *Id.* ¶ 420. On October 6, 2023, a researcher examining the leaked database reported the data included  
21 more than 300,000 users of Chinese heritage. Compl. ¶ 421. On that date, 23andMe confirmed it was  
22 the source of the stolen data, and after an investigation, determined the threat actor downloaded  
23 Personal Information without authorization relating to approximately 6.6 million natural persons in  
24 the United States. *Id.* ¶¶ 422-439.<sup>4</sup> The Personal Information accessed varied on a person-by-person  
25 basis. For most of the impacted customers, the Personal Information accessed by the threat actor  
26 included the Personal Information from a customer’s DNA Relatives profile or Family Tree Profile

27 \_\_\_\_\_  
28 <sup>4</sup> This number was confirmed to be 6.4 million natural persons in the United States. SA ¶ 3.

1 within 23andMe’s DNA Relatives feature, which may have included their name, sex, birth year,  
2 information about the customer’s ancestry based on their genetic information, self-reported location  
3 (city/zip code), ancestor birth locations, family names and family tree information. For a small number  
4 of customers, the threat actor also accessed Personal Information about the customer’s present or  
5 future health based on the analysis of their genetic data, their self-reported health information, and  
6 their uninterpreted genotype data. *Id.* ¶ 1.

7 After announcement of the Security Incident, over 40 putative class action lawsuits were filed  
8 against 23andMe asserting claims for a raft of common law torts and various statutory claims—  
9 including several that provide statutory damages for the disclosure of genetic information. On  
10 December 21, 2023, 23andMe filed a Motion to Transfer Actions to the Northern District of California  
11 Pursuant to 18 U.S.C. § 1407 for Coordinated or Consolidated Pretrial Proceedings with the Judicial  
12 Panel on Multidistrict Litigation, MDL No. 3098. On April 11, 2024, the JPML centralized the  
13 Litigation before the Honorable Edward M. Chen of the Northern District of California, where dozens  
14 of putative class action lawsuits were pending. The Court considered applications for the appointment  
15 of Interim Co-Lead Counsel under Fed. R. Civ. P. 23(g) and held a hearing on the motions on June 3,  
16 2024. On June 5, 2024, the Court appointed Interim Co-Lead Counsel. Dkt. 62. Upon appointment,  
17 Interim Co-Lead Counsel filed a 186-page consolidated complaint on June 26, 2024, alleging 40  
18 causes of action. Dkt. 78. The operative complaint in this action is a superseding operative complaint  
19 that aggregated claims brought by litigants around the country.

20 **B. A Summary of the Mediation Efforts and Agreement to Settle**

21 Prior to the appointment of Interim Co-Lead Counsel, starting in January 2024, a small group  
22 of Plaintiffs’ counsel and 23andMe scheduled an early mediation for January 31, 2024. Class Counsel  
23 Decl. ¶ 23. Other Plaintiffs’ lawyers—including Interim Co-Lead Counsel—learned of the mediation  
24 and participated either in person or by Zoom. Plaintiffs’ counsel representing nearly every case filed  
25 against 23andMe participated in the January 31, 2024, mediation overseen by Mr. Wulff, which  
26 although productive, did not result in a settlement. *Id.*

27 Subsequently, a smaller group of Plaintiffs’ counsel, including Interim Co-Lead Counsel  
28

1 Norman E. Siegel and Gayle M. Blatt, agreed to participate in a second mediation with 23andMe  
2 before Mr. Wulff, with a commitment to keep all Plaintiffs' counsel informed as to the progress of the  
3 negotiations. Class Counsel Decl. ¶ 24. Prior to this mediation, the group engaged an independent  
4 forensic accounting firm to advise it with respect to 23andMe's financial condition, and continued  
5 their work with experts to, among other things, develop business practice changes designed to protect  
6 Settlement Class Members' sensitive data. *Id.* On March 20, 2024, the Parties engaged in a second  
7 day-long mediation under the direction of Mr. Wulff. Like the first mediation, the process was  
8 productive but did not result in a settlement. *Id.*

9 On June 5, 2024, the Court appointed Mr. Siegel, Ms. Blatt and Cari C. Laufenberg to serve as  
10 Interim Co-Lead Counsel, authorizing them to pursue the Litigation on behalf of the Plaintiffs, and to  
11 continue settlement negotiations on behalf of the Plaintiffs and the putative class members, which now  
12 comprise the Settlement Class. Dkt. 62. Interim Co-Lead Counsel and Defendant were directed by the  
13 Court to coordinate with Mr. Wulff for further attempts at resolution. Dkt. 62 ¶ 9.

14 Beginning prior to the first mediation on January 31, 2024, the Parties exchanged informal  
15 discovery in preparation for the mediation sessions before Mr. Wulff and continued discussions  
16 through June 26, 2024, when an additional mediation session was held. The arm's length mediation  
17 sessions resulted in a mediator's proposal for resolution of Plaintiffs' claims against Defendant. Class  
18 Counsel Decl. ¶ 26. On July 12, 2024, all Parties accepted the mediator's proposal, reaching agreement  
19 in principle to resolve this Litigation. *Id.* The acceptance of the mediator's proposal resulted in the  
20 July 29, 2024, execution of a term sheet containing the material terms of the Settlement. Class Counsel  
21 Decl. ¶ 28. And, now presented for the Court's consideration, is the formal Settlement Agreement,  
22 attached as Exhibit A, which forms the basis of this Motion.

### 23 III. SETTLEMENT TERMS

#### 24 A. Benefits to Settlement Class Members

25 The Settlement Agreement provides monetary benefits in the form of a non-reversionary  
26 Settlement Fund of \$30,000,000, which shall be used to pay for: (1) benefits to the Settlement Class  
27 as outlined below; (2) Notice and Claims Administrative Costs; (3) attorneys' fees and expenses

1 awarded by the Court; and (4) Service Awards awarded by the Court. SA ¶¶ 58-59. The Net Settlement  
 2 Fund shall be used to pay for cash payments to Settlement Class Members who make valid claims,  
 3 and to provide Privacy Shield for all Settlement Class Members who enroll. SBP ¶ 3.

4 *First*, Settlement Class Members may make an Extraordinary Claim for verifiable  
 5 unreimbursed costs or expenditures up to \$10,000 related to the Security Incident. Extraordinary  
 6 Claims provide reimbursement for: (1) unreimbursed costs incurred as a direct result of identity fraud  
 7 or falsified tax returns that the Settlement Class Member establishes were the result of the Security  
 8 Incident; (2) unreimbursed costs associated with the purchase of a physical security or monitoring  
 9 system that a Settlement Class Member establishes was purchased in response to the Security Incident;  
 10 and (3) unreimbursed costs associated with seeking professional mental health counseling or treatment  
 11 that a Settlement Class Member establishes were the result of the Security Incident. *Id.* ¶ 4.

12 *Second*, Settlement Class Members who were residents of Alaska, California, Illinois or  
 13 Oregon —states that have genetic privacy laws with statutory damages provisions—may make a  
 14 Statutory Cash Claim. *Id.* ¶ 6. Interim Co-Lead Counsel anticipates that, depending on the claims rate,  
 15 the Statutory Cash Claims will result in payments of approximately \$100 for eligible claimants. Class  
 16 Counsel Decl. ¶ 38.<sup>5</sup>

17 *Third*, the small number of Settlement Class Members that had health information  
 18 compromised in the Security Incident may submit a Health Information Claim. Health Information  
 19 Claims will be paid a fixed \$100 cash payment. *Id.* ¶ 38.<sup>6</sup>

20 *Fourth*, all Settlement Class Members will be entitled to enroll in Privacy Shield, which will  
 21 be available for three years. This monitoring program was developed by experts in the field specifically  
 22 for this case, and provides substantial web and dark web monitoring for Settlement Class Members.  
 23 CyEx Dec. ¶¶ 6-7. Privacy Shield will also aid in reducing Settlement Class Members' digital

24 \_\_\_\_\_  
 25 <sup>5</sup> By way of example, Interim Co-Lead Counsel estimates that a 10% claims rate for Statutory Cash  
 26 Claims will result in payments of at least \$100—and up to 35% more if the Extraordinary Claims Fund  
 is not exhausted.

27 <sup>6</sup> All Extraordinary Claims, Statutory Cash Claims, and Health Information Claims shall be paid  
 28 pursuant to the Payment Schedule detailed in the Settlement Benefits Plan submitted by Interim Co-  
 Lead Counsel in conjunction with this motion for Preliminary Approval. SA ¶ 43.

1 footprint. The extensive benefits are described in the Declaration of Gerald Thompson. *See id.* ¶¶ 6-7.

2 To take advantage of the cash payments and to enroll in Privacy Shield, Settlement Class  
3 Members will submit Claim Forms to the Notice and Claims Administrator electronically or download  
4 a form for mailing from the Settlement Website. SA ¶ 100. Settlement Class Members will be able to  
5 receive their payments by an electronic payment option or can opt for a mailed check. SBP ¶ 13.  
6 Activation codes for Privacy Shield will be automatically sent after the Effective Date to Settlement  
7 Class Members who submitted a claim. However, even if they do not make a claim for Privacy Shield  
8 prior to the Claims Deadline, Settlement Class Members will be entitled to enroll *at any point* during  
9 the three-year period that Privacy Shield is active and will be able to take advantage of the remaining  
10 time available on the three-year term of the program. SBP ¶ 12. Should any funds remain from the  
11 failure of Settlement Class Members to timely negotiate a settlement check or to timely provide  
12 required tax information such that a settlement check could issue, they will be used to extend the active  
13 period for Privacy Shield. No funds may revert to 23andMe. SBP ¶ 8.

14 **B. The Settlement Includes Important Business Practice Commitments Designed to Enhance  
15 the Security of Settlement Class Members' Personal Information**

16 As additional consideration for the Settlement, 23andMe commits to adopting, paying for,  
17 implementing and maintaining the following Business Practices Commitments related to information  
18 security to safeguard current users' and Settlement Class Members' Personal Information. Each  
19 Business Practice Commitment is described in detail in the Settlement Agreement. SA ¶¶ 70. These  
20 commitments include: (1) enhanced password protection; (2) mandated multi-factor authentication;  
21 (3) annual security awareness training; (4) annual computer scans and cybersecurity audits; (5)  
22 information security program; (6) maintenance of data breach incidents response plan and threat  
23 management; and (7) limited retention of inactive Personal Information. *Id.* Moreover, the Class  
24 Notice will provide a link where Settlement Class Members can have their information deleted by  
25 23andMe, subject to certain conditions such as legal record retention requirements. SA ¶ 71. At least  
26 14 days in advance of the Final Approval Hearing, 23andMe will file a report with the Court, with a  
27 copy to Class Counsel, detailing the status of its compliance with the Business Practice Commitments  
28 identified above. The report is to be certified by the most senior 23andMe employee with responsibility

1 for overseeing the Business Practice Commitments. *Id.* at ¶ 72.

2 **C. Class Definition and the Estimated Class Size**

3 The Settlement Class includes: “all natural persons who were residents of the United States on  
4 August 11, 2023 and whose Personal Information was compromised in the Security Incident.” SA  
5 ¶ 44. The Statutory Subclass is defined to include Settlement Class Members who were residents of  
6 Alaska, Oregon, California or Illinois as of August 11, 2023. SA ¶ 51. The Settlement Class and  
7 Statutory Subclass specifically exclude: (i) 23andMe and its officers and directors; (ii) all Settlement  
8 Class Members who timely and validly request to opt-out from the Settlement Class; (iii) the Judge  
9 assigned to evaluate the fairness of this settlement; and (iv) potential class members who have  
10 provided 23andMe with an express release of claims arising out of or related to the Security Incident  
11 prior to the Effective Date of this Settlement. SA ¶ 44.<sup>7</sup> 23andMe’s investigation determined the threat  
12 actor downloaded Personal Information without authorization relating to approximately 6.4 million  
13 natural persons in the United States. SA ¶ 3. The Statutory Subclass includes approximately 1.4 million  
14 natural persons in the United States. Class Counsel Decl. ¶ 44.

15 **D. Counsel’s Fees and Costs and the Settlement Class Representatives’ Service Awards**

16 Interim Co-Lead Counsel anticipate they will petition the Court for attorneys’ fees of up to  
17 25% of the Qualified Settlement Fund, and reimbursement of reasonable expenses incurred in the  
18 Litigation. SA ¶ 97; *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011) (“*In*  
19 *re Bluetooth*”). The Settlement Class and the Court will have a full opportunity to consider the  
20 appropriate fees as part of the final approval process. There is no “clear sailing” agreement, and final  
21 approval is not contingent upon approval of the requested attorneys’ fees, costs and expenses. SA ¶¶  
22 97, 99, 104. Interim Co-Lead Counsel also intends to request reimbursement for expenses associated  
23 with the retention of cybersecurity and financial experts, mediation costs, and other costs incurred  
24 during the Litigation.

25 <sup>7</sup> The Settlement Class definition encompasses the same persons as the Nationwide Class in the  
26 Complaint. The “Nationwide Ethnically Targeted Persons Class” is subsumed within the Settlement  
27 Class definition. The proposed Statutory Subclass definition applies only to residents of the four states  
28 with genetic privacy statutes that provide statutory damages, as alleged in the Complaint, and here, the  
eligibility is defined as of August 11, 2023, the date the initial data appeared on the dark web.



1 The current compensable common benefit lodestar—as explained in detail in the Class Counsel  
 2 Declaration—is currently approximately \$3,560,000, with approximately \$1,500,000 likely to be  
 3 incurred during the remainder of the case.<sup>8</sup> Class Counsel Decl. ¶¶ 49-56. Should proposed Class  
 4 Counsel seek \$7,500,000 in fees (25% of the Fund), the resulting lodestar multiplier would be 1.48.  
 5 *Id.* ¶ 57. Proposed Class Counsel will submit finalized figures in connection with their forthcoming  
 6 motion for fees and expenses. ¶ 58.

7 Under the Settlement, proposed Class Counsel will seek approval of Settlement Awards of  
 8 \$500 for each Settlement Class Representative, which 23andMe will not oppose. SA ¶ 98. The  
 9 Settlement is not contingent upon approval of the Service Awards to the Settlement Class  
 10 Representatives, and the Settlement Class and the Court will have a full opportunity to evaluate the  
 11 request for such awards as part of the final approval process. *Id.* ¶¶ 99, 104.

12 **E. The Settlement’s Release is Coextensive with the Ninth Circuit’s “identical factual  
 13 predicate” Requirement**

14 The Settlement Agreement proposes a mutual release between each Settlement Class Member  
 15 and specified Parties listed in the Agreement, including 23andMe and its past or present parents,  
 16 subsidiaries, directors, employees, and agents, for all the claims asserted as part of this MDL as well  
 17 as claims that have not been asserted but “aris[e] out of the identical factual predicate as the  
 18 allegations” in the Litigation. SA ¶¶ 15, 37-39; *Hesse v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir.  
 19 2010) (quoting *Williams v. Boeing Co.*, 517 F.3d 1120, 1133 (9th Cir. 2008); *Class Plaintiffs v. City  
 20 of Seattle*, 955 F.2d 1268, 1287 (9th Cir. 1992)). There are two state court cases, which assert  
 21 overlapping class claims related to the Security Incident, which would be covered by the release as  
 22 would any individual action or arbitration unless the Settlement Class Member elects to opt out of the  
 23 Settlement. These claims and their known status are addressed in further detail in the Declaration of  
 24 Class Counsel. Class Counsel Decl. ¶¶ 45-48.

25 **IV. THE SETTLEMENT MERITS PRELIMINARY APPROVAL**

26 Under Federal Rule of Civil Procedure 23(e)(2), before approving a class action settlement, a

27 <sup>8</sup> Interim Co-Lead Counsel have reviewed the time submitted by representing counsel in the MDL and  
 28 provided an explanation of the lodestar in their declaration. Further review will be conducted, and more  
 details provided in conjunction with the formal Motion for Attorneys’ Fees.

1 district court must conclude that the settlement is “fair, reasonable, and adequate.” *In re Apple Inc.*  
2 *Device Performance Litig.*, 50 F.4th 769, 780 (9th Cir. 2022) (quoting Fed. R. Civ. P. 23(e)(2)); *see*  
3 *also Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1035 (N.D. Cal. 2016). “Courts reviewing class action  
4 settlements must ‘ensure[] that unnamed class members are protected from unjust or unfair settlements  
5 affecting their rights,’ while also accounting for ‘the strong judicial policy that favors settlements,  
6 particularly where complex class action litigation is concerned.’” *Campbell v. Facebook, Inc.*, 951  
7 F.3d 1106, 1120–21 (9th Cir. 2020) (citations omitted).

8 A district court’s review of a proposed class action settlement generally involves two steps.  
9 First, at the preliminary approval stage, a court “determines whether a proposed settlement is ‘within  
10 the range of possible approval’ and whether or not notice should be sent to class members.” *True v.*  
11 *Am. Honda Motor Co.*, 749 F. Supp. 2d 1052, 1063 (C.D. Cal. 2010) (citation omitted).<sup>9</sup> In evaluating  
12 whether the proposed settlement falls “within the range of possible approval,” the most important  
13 factor is “‘plaintiffs’ expected recovery balanced against the value of the settlement offer.’” *Cotter v.*  
14 *Lyft, Inc.* 176 F. Supp. 3d 930, 935 (N.D. Cal. 2016) (citation omitted). And where, as here, the  
15 settlement was reached prior to class certification, “the district court must apply a ‘higher standard of  
16 fairness.’” *Id.* (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998), *overruled on*  
17 *other grounds by Wal-Mart Stores, Inc., v. Dukes*, 564 U.S. 338 (2011)); *see also In re Apple Inc.*  
18 *Device Performance Litig.*, 50 F.4<sup>th</sup> at 776 (“As we have repeatedly admonished, settlement prior to  
19 class certification requires extra scrutiny.”).

20 Under the factors set forth in *Hanlon*, a district court must consider:

21 [T]he strength of the plaintiff’s case; the risk, expense, complexity, and  
22 likely duration of further litigation; the risk of maintaining class action  
23 status throughout the trial; the amount offered in settlement; the extent of  
24 discovery completed and the stage of the proceedings; the experience and  
25 views of counsel; the presence of a government participant; and the reaction  
of the class members to the proposed settlement.<sup>10</sup>

26 <sup>9</sup> *See also, e.g.*, U.S.D.C., N.D. Cal., *Procedural Guidance for Class Action Settlements*,  
<https://www.cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements>.

27 <sup>10</sup> The last factor—the reaction of class members—is not known because Class Members have not yet  
28 had the opportunity to react. This factor will need to be evaluated at the final approval stage.

1 *O'Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110, 1120 (N.D. Cal. 2016) (quoting *Hanlon*, 150  
2 F.3d at 1026). As shown below, these factors, as well as others, strongly favor preliminary approval.

3 **A. The Strengths and Risks of Plaintiffs' Claims**

4 Plaintiffs believe their claims are meritorious, and the strength of Plaintiffs' claims is a critical  
5 factor that drove settlement negotiations and the proposed Settlement Agreement. At the same time,  
6 Plaintiffs face substantial risks that could decrease the amount of recovery—or even defeat recovery  
7 on a classwide basis altogether. The strengths and risks of Plaintiffs' claims are addressed below, first  
8 with respect to overarching considerations and then by categories of claims. With respect to each  
9 category of claims, Plaintiffs offer, to the extent possible, an estimate of the range of recovery for each  
10 category of claims as well as the extent to which Plaintiffs believe a discount is appropriate for  
11 settlement purposes.<sup>11</sup>

12 **B. The Financial Condition of the Defendant Supports Approval of the Settlement**

13 Simply put, the overarching consideration that weighs in favor of preliminary approval is  
14 23andMe's financial condition. As set forth above, 23andMe has dwindling resources and faces  
15 substantial financial challenges. Plaintiffs' counsel engaged an independent forensic accounting firm  
16 that confirmed what is apparent in 23andMe's publicly-filed reports—the company has limited funds,  
17 no reliable access to new capital, and mounting litigation exposure in other proceedings and  
18 investigations, meaning that any litigated judgment significantly more than the Settlement is likely to  
19 be uncollectable. This fact weighs strongly in favor of settlement approval. *See, e.g., In re Volkswagen*  
20 *"Clean Diesel" Marketing, Sales Practices and Prods. Liab. Litig.*, MDL 2672, 2016 WL 6248426,  
21 at \*11 (N.D. CA. October 25, 2016) (noting that a settlement class could also receive nothing not only  
22 "because of the risks of litigation *but also because of the solvency risks[.]*" (emphasis added)); *In re*

23 \_\_\_\_\_  
24 <sup>11</sup> Plaintiffs do not analyze punitive damages at this stage, even though some claims allow for their  
25 recovery. Plaintiffs do not intend to argue against the imposition of punitive damages. Rather, punitive  
26 damages are inherently unpredictable and discretionary; as such, they typically play a limited role in  
27 determining the fairness of a settlement. *See In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., &*  
28 *Prod. Liab. Litig.*, MDL No. 2672, 2017 WL 2212783, at \*24 (N.D. Cal. May 17, 2017) (because "any  
award of punitive damages is inherently speculative and discretionary, courts regularly approve  
settlements that offer no or little compensation representing the risk of a punitive damages award")  
(citation omitted).

1 *Lumber Liquidators Chinese-Manufactured Flooring Prod. Mktg., Sales Pracs. & Prod. Liab. Litig.*,  
2 952 F.3d 471, 485 (4th Cir. 2020) (noting that the defendant’s “potential inability to pay litigated  
3 judgments . . . weighs in favor of the court’s adequacy ruling”).

#### 4 **1. Risks Related to Class Certification**

5 Although Plaintiffs believe a class would be certified for at least some, if not all, of their  
6 nationwide claims, as well as claims brought on behalf of the State Subclasses, Plaintiffs recognize  
7 the significant risk of an adverse class certification ruling by this Court, the Ninth Circuit, or the  
8 Supreme Court. In this regard, Plaintiffs have already developed evidence of 23andMe’s general  
9 practices, and many of Plaintiffs’ claims concern standard provisions that apply uniformly to every  
10 person using 23andMe’s services. *See, e.g., Ellsworth v. U.S. Bank, N.A.*, No. 3:12-cv-02506-LB, 2014  
11 WL 2734953, at \*20 (N.D. Cal. June 13, 2014) (“identical mortgage contracts” supports certification).  
12 For example, Plaintiffs’ contract claims concern standard provisions that apply uniformly to every  
13 person using 23andMe’s services. Likewise, with regard to Plaintiffs’ negligence claims, Plaintiffs’  
14 allegations concerning 23andMe’s duties vis-à-vis its users’ Personal Information applies equally to  
15 all Settlement Class Members, as do its arguments regarding whether 23andMe breached its duties to  
16 Settlement Class Members. *See Jimenez v. Allstate Ins. Co.*, 765 F.3d 1161, 1168 (9th Cir. 2014).

17 However, as noted above, Plaintiffs also face significant risks with respect to class  
18 certification. For instance, choice of law issues could also present a potential hurdle for some of  
19 Plaintiffs’ nationwide claims. *See* 7AA Charles Alan Wright & Arthur R. Miller, Fed. Prac. & Proc.  
20 Civ. § 1780.1 (3d ed.) (noting that class actions requiring application of multiple state laws can  
21 implicate Rule 23(b)(3)’s requirements of predominance and superiority). Similarly, for other claims,  
22 23andMe might successfully argue that individualized issues would predominate. Further, even if  
23 Plaintiffs successfully certified one or more classes, there would be a risk that the Court could later  
24 decertify the class. *See In re Netflix Privacy Litig.*, Case No. 5:11-cv-00379 EJD, 2013 WL 1120801,  
25 at \*6 (N.D. Cal. Mar. 18, 2013) (“The notion that a district court could decertify a class at any time is  
26 one that weighs in favor of settlement.”).

## 2. Comparing the Strengths and Risks of the Contract-Related Claims

Plaintiffs bring contract-based claims—breach of express contract, breach of implied contract, and breach of the implied covenant of good faith and fair dealing (Counts 5, 6, and 107)—based on 23andMe’s breach of its agreement with Plaintiffs and Settlement Class Members by failing to protect their Personal Information. Dkt. 78 at 109. Specifically, Plaintiffs allege that 23andMe (1) failed to take reasonable steps to use safe and secure systems to protect that information; and (2) allowed Personal Information to be disclosed to unauthorized third parties, in violation of applicable agreements with 23andMe. *Id.* In support of these contract-based claims, Plaintiffs believe they could prove that 23andMe’s data security systems were deficient and were the proximate cause of the exfiltration of Plaintiffs’ Personal Information. Conversely, there remain significant risks in continuing to litigate these claims. For example, 23andMe may argue that Plaintiffs’ express breach of contract claim fails to identify which specific contractual provision 23andMe breached. *See Young v. Facebook, Inc.*, 790 F. Supp. 2d 1110, 1117 (N.D. Cal. 2011) (explaining that a claim for breach of contract “must allege the specific provisions in the contract creating the obligation the defendant is said to have breached”). Such an argument may prove convincing for the Court.

However, Plaintiffs’ breach of implied contract claim may address concerns in that regard. *See, e.g., Castillo v. Seagate Tech., LLC*, Case No. 16-cv-01958-RS, 2016 WL 9280242, at \*9 (N.D. Cal. Sept. 14, 2016) (noting in declining to dismiss implied breach of contract claim that, “[w]hile Seagate made no explicit promises as to the ongoing protection of personal information, it is difficult to imagine how, in our day and age of data and identity theft, the mandatory receipt of Social Security numbers or other sensitive personal information would not imply the recipient’s assent to protect the information sufficiently.”); *Rudolph v. Hudson’s Bay Co.*, Case No. 18-cv-8472 (PKC), 2019 WL 2023713, at \*11 (S.D.N.Y. May 7, 2019) (“Other courts applying California law have concluded that an implied contract is formed where a person discloses sensitive information in order to receive a benefit, with the expectation that such information will be protected.”).

Damages may prove challenging for Plaintiffs’ contract-based claims given the difficulties in quantifying the resulting economic and non-economic harm suffered on a classwide basis. Likewise,

1 the remedy of restitution also entails risk.<sup>12</sup> Pursuing this remedy would not require Plaintiffs to  
2 demonstrate their own quantifiable loss, and restitutionary disgorgement may be appropriate where,  
3 as here, “actual damages are difficult to prove.” *Young v. Wideawake Death Row Ent., LLC*, Case No.  
4 CV 10-1010 CAS (JEMx), 2011 WL 13371881, at \*2–3 (C.D. Cal. May 16, 2011); *see also* Rest.  
5 (Third) of Restitution and Unjust Enrichment § 1 cmt. a (2011). Nevertheless, quantifying the extent  
6 to which 23andMe was unjustly enriched is a hurdle that may be difficult for Plaintiffs to overcome,  
7 as associating certain profits with 23andMe’s broad misconduct in this case will likely be challenging,  
8 and for this reason the Court might find Plaintiffs’ method of calculating of such figures to be  
9 unpersuasive or reject them altogether.

10         Given the above challenges, trying the contract-based claims carries risk, requiring a discount.  
11 Plaintiffs assert that there is a relatively wide range of possible recoveries if their contract-based claims  
12 were successful at trial, ranging from a significant fraction of the settlement amount at the low end to  
13 several times the settlement amount at the high end. Given the merits-based and procedural risks, the  
14 benefit Settlement Class Members would receive under the proposed Settlement Agreement  
15 appropriately accounts for the risks associated with continuing to litigate Plaintiffs’ contract claims.

### 16           **3. Comparing the Strengths and Risks of the Negligence-Based Claims**

17         Plaintiffs allege that 23andMe is liable for negligence and negligence per se (Counts 1 and 2)  
18 for failing to provide fair, reasonable, or adequate data security practices to safeguard Plaintiffs’ and  
19 Settlement Class Members’ sensitive Personal Information. Plaintiffs believe they would be able to  
20 prove that 23andMe owed a duty to Plaintiffs and Settlement Class Members to exercise reasonable  
21 care in safeguarding their Personal Information, and that it breached that duty. In this regard, Plaintiffs  
22 believe that they would be able to demonstrate how 23andMe failed to (1) implement adequate security  
23 systems, (2) detect the Security Incident while it was ongoing, (3) maintain security systems consistent  
24 with industry standards during the period of the Security Incident, (4) comply with regulations  
25 protecting the Personal Information at issue, and (5) disclose in a timely and adequate manner that

26 \_\_\_\_\_  
27 <sup>12</sup> *See Alkayali v. Hoed*, Case No. 3:18-cv-777-H-JMA, 2018 WL 3425980, at \*6–7 (S.D. Cal. July 16,  
28 2018) (“California law permits plaintiffs to seek disgorgement of a defendant’s unjust enrichment as a  
restitutionary remedy for breach of contract.”).

1 Plaintiffs’ and Settlement Class Members’ Personal Information in 23andMe’s possession had been  
2 compromised.

3         However, the negligence-based claims face obstacles as well. First, 23andMe may argue that  
4 at least some Plaintiffs assumed the risk of identity theft and fraud by recycling their login credentials  
5 and failing to use a unique password. In a letter to a group of users who filed claims against the  
6 company, 23andMe said that “users negligently recycled and failed to update their passwords  
7 following these past security incidents, which are unrelated to 23andMe,” and that “[t]herefore, the  
8 incident was not a result of 23andMe’s alleged failure to maintain reasonable security measures.”<sup>13</sup>

9         Second, as noted above, Plaintiffs presentation of a classwide damages model quantifying the  
10 Settlement Class Members’ damages attributable to 23andMe’s negligence may be subject to  
11 challenge. Although 23andMe admitted that different categories of Plaintiffs’ Personal Information  
12 were compromised, including, *inter alia*, names, sex, dates of birth, various genetic information,  
13 ancestry reports, and family tree information,<sup>14</sup> 23andMe could argue that not all categories of  
14 information were compromised by unauthorized third parties for all Settlement Class Members.  
15 Separately, Plaintiffs also face the risk that 23andMe may be able to successfully argue that  
16 quantifiable actual damages theories may not predominate at the class certification stage. *See, e.g.*,  
17 *Opperman v. Path, Inc.*, No. 3:13-cv-00453-JST, 2016 WL 3844326, at \*14–15 (N.D. Cal. July 15,  
18 2016) (discussing issues with valuing privacy on a classwide basis). This means that Plaintiffs might  
19 elect to pursue nominal damages, which are appropriate “where the amount of damages is uncertain.”  
20 *Id.* at \*16 (quoting *Apple, Inc. v. Samsung Elecs. Co., Ltd.*, No. 5:11-cv-01846-LHK, 2012 WL  
21 2571719, at \*28 (N.D. Cal. June 30, 2012)).

22         Litigating the negligence claims therefore carries risk, meriting a discount. Plaintiffs assert that  
23 there is a range of possible recoveries if their negligence-based claims were successful at trial,  
24 however, the analysis is not without challenge. To date, there have been no data breach cases tried to  
25

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26 <sup>13</sup> Lorenzo Franceschi-Biccieri, *23andMe tells victims it’s their fault that their data was breached*,  
27 TechCrunch (Jan. 3, 2024), <https://techcrunch.com/2024/01/03/23andme-tells-victims-its-their-fault-that-their-data-was-breached>.

28 <sup>14</sup> Dkt. 78 at 75.

1 verdict, and the damages range is therefore difficult to quantify. Traditionally, Plaintiffs have  
2 advanced damages models based on various measurements designed to make Plaintiffs and the Class  
3 whole, including for example, the retail value of restorative monitoring programs for the class.  
4 However, these damages models remain untested. Given this, the assumed range of verdicts, were  
5 Plaintiffs successful, has the potential to range from a fraction of the settlement amount at the low end  
6 to multiples of the settlement. Given the merits-based and procedural risks, the benefits Settlement  
7 Class Members would receive under the proposed Settlement Agreement appropriately accounts for  
8 the risks associated with continuing to litigate Plaintiffs' negligence claims.

#### 9 **4. Comparing the Strengths and Risks of the Privacy-Based Torts**

10 Plaintiffs' privacy-based torts—invasion of privacy based upon intrusion upon seclusion and  
11 invasion of privacy under the California Constitution (Counts 4 and 17)—require showing that (1)  
12 Plaintiffs had a reasonable expectation that their Personal Information would be kept private, and that  
13 (2) 23andMe's disclosure of their sensitive Personal Information was highly offensive. *See In re*  
14 *Facebook, Inc. Internet Tracking Litig.*, 956 F.3d 589, 601 (9th Cir. 2020) (listing elements for both  
15 claims). Both elements are mixed questions of law and fact. *Hill v. Nat'l Collegiate Athletic Assn.*, 7  
16 Cal. 4th 1, 40 (1994).

17 Plaintiffs privately disclosed their Personal Information to 23andMe as part of obtaining  
18 genetic testing and analysis services. Dkt. 78 at 131. Plaintiffs are confident the evidence will support  
19 Plaintiffs' allegation that they had a reasonable expectation that their most sensitive Personal  
20 Information would be kept confidential and protected from unauthorized disclosure. *Id.* However,  
21 significant risks remain with proving these privacy-based torts at trial. To prevail, Plaintiffs must prove  
22 that the disclosure of their Personal Information was highly offensive to a reasonable person.  
23 "Determining whether a defendant's actions were 'highly offensive to a reasonable person' requires a  
24 holistic consideration of factors such as the likelihood of serious harm to the victim, the degree and  
25 setting of the intrusion, the intruder's motives and objectives, and whether countervailing interests or  
26 social norms render the intrusion inoffensive." *In re Facebook, Inc. Internet Tracking Litig.*, 956 F.3d  
27 at 606 (quoting *Hernandez v. Hillsides, Inc.*, 47 Cal. 4th 272, 286 (2009)). *See id.* ("the highly  
28



1 offensive analysis focuses on the degree to which the intrusion is unacceptable as a matter of public  
2 policy”). Because the “highly offensive” analysis requires a holistic interpretation of many factors, in  
3 part guided by public policy, 23andMe could succeed in arguing that some or all of the compromised  
4 Personal Information does not meet this high bar. *Cf. In re Ambry Genetics Data Breach Litig.*, 567  
5 F. Supp. 3d 1130, 1143 (C.D. Cal. 2021) (explaining that courts routinely refuse to dismiss invasion  
6 of privacy claims in data breach cases “involve[ing] medical information[] because the disclosure of  
7 such information is more likely to constitute an ‘egregious breach of the social norms’ that is ‘highly  
8 offensive’”) (citing cases).

9 Moreover, for the same reasons as discussed above with respect to Plaintiffs’ negligence-based  
10 claims, Plaintiffs may face challenges in quantifying the damages attributable to 23andMe’s privacy  
11 violations on a classwide basis, and might therefore elect to pursue nominal damages. *See, e.g.,*  
12 *Opperman*, 2016 WL 3844326, at \*14–16. As such, litigating the privacy-based tort claims carries  
13 risk, meriting a discount. As with Plaintiffs’ other claims, their privacy-based tort claims could result  
14 in recoveries from a fraction of the settlement amount to multiples of the settlement. The proposed  
15 Settlement Agreement therefore appropriately accounts for the risks associated with continuing to  
16 litigate Plaintiffs’ privacy-based tort claims.

##### 17 **5. Comparing the Strengths and Risks of the Breach of Confidence and Breach of** 18 **Fiduciary Duty Claims**

19 To allege breach of fiduciary duty (Count 8), a plaintiff must show “(1) existence of a fiduciary  
20 duty; (2) breach of the fiduciary duty; and (3) damage proximately caused by the breach.” *Vaxiion*  
21 *Therapeutics, Inc. v. Foley & Lardner LLP*, 593 F. Supp. 2d 1153, 1169 (S.D. Cal. 2008). Whether a  
22 fiduciary duty exists is a question of law. *Marzec v. California Pub. Emps. Ret. Sys.*, 236 Cal. App.  
23 4th 889, 915 (2015). In response, 23andMe would likely argue that 23andMe did not owe Plaintiffs a  
24 fiduciary duty. “A fiduciary relationship is any relation existing between parties to a transaction  
25 wherein one of the parties is duty bound to act with the utmost good faith for the benefit of the other  
26 party.” *Gilman v. Dalby*, 176 Cal. App. 4th 606, 613 (2009) (cleaned up). “[T]raditional examples of  
27 fiduciary relationships include those of trustee/beneficiary, corporate directors and majority  
28 shareholders, business partners, joint adventurers, and agent/principal.” *Id.* at 614. The Court may rule

1 that Plaintiffs entered into an arms-length business relationship with 23andMe insufficient to create a  
2 fiduciary duty, despite the fact that Plaintiffs tasked 23andMe with safeguarding their sensitive  
3 Personal Information as part of this relationship. *See Worldvision Enterprises, Inc. v. Am. Broad.*  
4 *Companies, Inc.*, 142 Cal. App. 3d 589, 595 (1983) (“The mere fact that in the course of their business  
5 relationships the parties reposed trust and confidence in each other does not impose any corresponding  
6 fiduciary duty in the absence of an act creating or establishing a fiduciary relationship known to law.”).  
7 Such an argument raised by defendants has found support in similar factual circumstances. *See, e.g.,*  
8 *In re Ambry Genetics Data Breach Litig.*, 567 F. Supp. 3d at 1145–46 (“Plaintiffs have failed to allege  
9 sufficient facts to establish a fiduciary relationship between themselves and Defendants,” as “Plaintiffs  
10 simply allege that Defendants collected Plaintiffs’ private information so Defendants could provide  
11 their genetic testing to screen for and diagnose diseases,” which “is not a situation where the parties  
12 have a special relationship.”).

13 Similarly, the tort for breach of confidence in California (Count 3) “is based upon the concept  
14 of an implied obligation or contract between the parties that confidential information will not be  
15 disclosed.” *Ent. Rsch. Grp., Inc. v. Genesis Creative Grp., Inc.*, 122 F.3d 1211, 1226-27 (9th Cir.  
16 1997). A plaintiff must allege “(1) the plaintiff conveyed ‘confidential and novel information’ to the  
17 defendant; (2) the defendant had knowledge that the information was being disclosed in confidence;  
18 (3) there was an understanding between the defendant and the plaintiff that the confidence be  
19 maintained; and (4) there was a disclosure or use in violation of the understanding.” *Id.* at 1227  
20 (citation omitted).

21 23andMe may argue that Plaintiffs’ breach of confidence fails as a matter of law because  
22 23andMe did not “disclose” Plaintiffs’ sensitive Personal Information, but it was instead stolen from  
23 23andMe. Resolution of this issue would therefore depend on how the Court interprets the word  
24 “disclosure” for the claim’s fourth element. Some California courts have followed the interpretation  
25 that favors 23andMe, when disclosure of information is due to an unauthorized party’s activities rather  
26 than a defendant’s affirmative actions. *See, e.g., In re Ambry Genetics Data Breach Litig.*, 567 F.  
27 Supp. 3d at 1146–47 (“Plaintiffs do not allege that Defendants affirmatively shared any information  
28

1 or performed any act that gave hackers information,” and because “Defendants made no ‘disclosure’  
2 of Plaintiffs’ confidential information, they cannot be held liable on a claim for breach of  
3 confidence.”); *Sutter Health v. Superior Ct.*, 227 Cal. App. 4th 1546, 1555–56 (2014) (explaining that  
4 the “ordinary meaning” of the word “disclosure” “suggest[s] that disclosure occurs when the health  
5 care provider affirmatively shares medical information with another person or entity”).

6 Further, for the same reasons as discussed above with respect to Plaintiffs’ privacy- and  
7 negligence-based claims, Plaintiffs would likely face challenges in quantifying the damages  
8 attributable to 23andMe’s violations on a classwide basis, and might therefore elect to pursue nominal  
9 damages. To date, there are no data breach verdicts on which to base the expected range of recoveries  
10 with any assurance. Therefore, litigating the breach of confidence and breach of fiduciary duty claims  
11 carries risk, meriting a discount. The range of potential outcomes is from a fraction of the settlement  
12 amount to multiples of settlement amount. Given these risks, the Settlement appropriately accounts  
13 for the risks associated with continuing to litigate Plaintiffs’ breach of confidence and breach of  
14 fiduciary duty claims.

#### 15 **6. Comparing the Strengths and Risks of the Conversion and Unjust Enrichment** 16 **Claims**

17 “In California, there is not a standalone cause of action for ‘unjust enrichment,’ which is  
18 synonymous with ‘restitution.’” *Astiana v. Hain Celestial Grp., Inc.*, 783 F.3d 753, 762 (9th Cir. 2015)  
19 (quoting *Durell v. Sharp Healthcare*, 183 Cal. App. 4th 1350 (2010)). Rather, unjust enrichment  
20 (Count 10) describes “the theory underlying a claim that a defendant has been unjustly conferred a  
21 benefit ‘through mistake, fraud, coercion, or request.’” *Id.* (quoting 55 Cal. Jur. 3d Restitution § 2).

22 As such, the Court may construe this cause of action as a quasi-contract claim seeking  
23 restitution, as other courts in this District have done. *See Nguyen v. Stephens Inst.*, 529 F. Supp. 3d  
24 1047, 1057 (N.D. Cal. 2021). *But see Bruton v. Gerber Prods. Co.*, 703 F. App’x 468, 470 (9th Cir.  
25 2017) (“[T]he California Supreme Court has clarified California law, allowing an independent claim  
26 for unjust enrichment to proceed[.]”). If so, 23andMe may argue that Plaintiffs may not  
27 simultaneously maintain both claims for breach of contract and unjust enrichment. “As a matter of  
28 law, a quasi-contract claim for unjust enrichment ‘cannot lie where there exists between the parties a

1 valid express contract covering the same subject matter.” *Nguyen*, 529 F. Supp. 3d at 1057 (quoting  
2 *Rutherford Holdings, LLC v. Plaza Del Rey*, 223 Cal. App. 4th 221, 231 (2014)). *See Durell*, 183 Cal.  
3 App. 4th at 1370 (“As a matter of law, an unjust enrichment claim does not lie where the parties have  
4 an enforceable express contract.”). Likewise, this claim therefore may face similar challenges and  
5 likely outcomes as discussed above with respect to Plaintiffs’ claim for breach of implied contract.

6 Relatedly, “conversion is the unwarranted interference by defendant with the dominion over  
7 the property of the plaintiff from which injury to the latter results.” *Snyder & Assocs. Acquisitions*  
8 *LLC v. United States*, 859 F.3d 1152, 1161 (9th Cir. 2017) (internal quotation marks omitted). The  
9 elements of conversion (Count 9) are: “(1) the plaintiff’s ownership or right to possession of the  
10 property; (2) the defendant’s conversion by a wrongful act or disposition of property rights; and (3)  
11 damages.” *Hanover Ins. Co. v. Fremont Bank*, 68 F. Supp. 3d 1085, 1100 (N.D. Cal. 2014) (citing  
12 *Burlesci v. Petersen*, 68 Cal. App. 4th 1062, 1066 (1998)). Plaintiffs believe they will be able to show  
13 their ownership of the property at issue—their own Personal Information. *See Kremen v. Cohen*, 337  
14 F.3d 1024, 1030 (9th Cir. 2003) (explaining that in California, “[p]roperty is a broad concept that  
15 includes ‘every intangible benefit and prerogative susceptible of possession or disposition’”) (citation  
16 omitted). And Plaintiffs likewise believe they will be able to demonstrate 23andMe’s conversion by  
17 its wrongful conduct in failing to adequately safeguard Plaintiffs’ Personal Information.

18 As both claims seek restitution as a remedy, it may prove challenging to present a defensible  
19 damages theory for these claims, and quantifying the extent to which 23andMe was unjustly enriched  
20 is a hurdle that may be difficult for Plaintiffs to overcome, as associating certain profits with  
21 23andMe’s broad misconduct in this case would likely be challenging, and the Court might find  
22 Plaintiffs’ method of calculating such figures to be unpersuasive or reject it altogether. Given these  
23 challenges, there is a relatively wide range of possible recoveries, ranging from a significant fraction  
24 of the settlement amount to several multiples of the settlement amount. The Settlement therefore  
25 appropriately accounts for the risks associated with continuing to litigate Plaintiffs’ conversion and  
26 unjust enrichment claims.

1           **7. Comparing the Strengths and Risks of the State Consumer Protection-Related**  
2           **Claims**

3           Plaintiffs and the various State Subclasses assert claims under state consumer protection  
4 statutes (Counts 11, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 31, 33, 34, 35, 36, 38, and 40) based on  
5 23andMe’s unfair and deceptive trade practices, failure to implement and maintain reasonable security  
6 and privacy measures to protect Plaintiffs’ and Subclass Members’ Personal Information, and  
7 misrepresenting that 23andMe would protect the privacy and confidentiality of such information.

8           There remain significant risks in continuing to litigate these claims through trial, including that  
9 23andMe would likely contest whether certain statutory requirements of each claim are satisfied.  
10 During discovery, Plaintiffs would seek to obtain evidence to support their allegations, for example,  
11 that 23andMe engaged in unfair and deceptive trade practices, committed fraudulent acts in connection  
12 with selling its services to consumers, and that 23andMe intended to mislead Plaintiffs and Subclass  
13 Members and induce them to rely on 23andMe’s misrepresentations and omissions. Notwithstanding  
14 the compelling evidence Plaintiffs believe would be obtained through discovery, there would remain  
15 a risk of unfavorable rulings as to one or more of Plaintiffs’ consumer protection claims at the motion  
16 to dismiss stage, class certification, summary judgment, or trial. Further, even if Plaintiffs were  
17 successful at trial, they may face challenges in proving damages, as many consumer protection statutes  
18 only provide for actual rather than statutory damages.<sup>15</sup> Plaintiffs would likely also face challenges in  
19 quantifying the damages attributable to 23andMe’s violations on a classwide basis for the same  
20 reasons as discussed above with respect to Plaintiffs’ privacy and negligence-based claims.

21           For these reasons, continued litigation over Plaintiffs’ consumer protection claims carries risk,  
22 meriting a discount. Plaintiffs assert that there is a relatively wide range of possible recoveries ranging  
23 from a significant fraction of the settlement amount to multiples of the settlement. This amount would  
24 vary on factors including the number of Subclass Members included in each of the 19 states covered  
25 by Plaintiffs’ consumer protection-related claims. The Settlement therefore appropriately accounts for

26 \_\_\_\_\_  
27 <sup>15</sup> See Carolyn L. Carter & Jonathan Sheldon, Unfair and Deceptive Acts and Practices, *National*  
28 *Consumer Law Center*, (10th ed. 2021) (App’x. A – Statute-by-Statute Analysis of State UDAP  
Statutes).

1 the risks associated with continuing to litigate Plaintiffs’ various consumer protection claims.

2 **8. Comparing the Strengths and Risks of the State Genetic Privacy-Based Claims**

3 Plaintiffs who are members of the Statutory Subclass assert claims under state genetic privacy  
4 statutes in Alaska, Illinois, and Oregon<sup>16</sup> based on 23andMe’s violation of Plaintiffs’ and Statutory  
5 Subclass Members’ statutorily protected rights to privacy of their genetic information (Counts 13, 24,  
6 and 32). 23andMe’s own disclosure of the Security Incident supports Plaintiffs’ claims. However,  
7 there remain significant risks with pursuing these claims through trial. First, 23andMe will likely argue  
8 that the information compromised in the Security Incident is not protected by the statutes upon which  
9 the Plaintiffs’ state genetic privacy claims are based, challenging whether these state laws explicitly  
10 safeguard the kind of “DNA analysis” and “genetic information” that was compromised in the Security  
11 Incident. *See* Dkt. 78 at 120, ¶ 664 (defining “DNA analysis” under the Alaska Genetic Privacy Act);  
12 *id.* at 145, ¶¶ 816-17 (defining “genetic information” under the Illinois Genetic Information Privacy  
13 Act); *id.* at 161, ¶ 907 (describing “genetic information” under the Oregon Genetic Privacy Law).

14 Although Plaintiffs believe they would demonstrate that state genetic privacy statutes apply to  
15 the claims of Plaintiffs and Statutory Subclass Members, and that the disclosure of their genetic  
16 information was unauthorized, continued litigation would still present significant risks. 23andMe  
17 would likely contest whether the statutes apply to the information compromised in the Security  
18 Incident, whether all of the discrete requirements of the genetic privacy claims are satisfied, and  
19 whether these claims could be maintained on a classwide basis. Further, there are very few cases  
20 interpreting these genetic privacy statutes—and even fewer that apply to the facts at issue here—and  
21 for this reason there is uncertainty regarding how these statutes would be interpreted and applied. In  
22 this regard, given the absence of robust, well-settled case law under such statutes, continuing to litigate  
23 Plaintiffs’ statutory genetic privacy claims would necessarily involve an unquantifiable degree of risk.

24 Evaluation of the risk therefore merits a discount. Nevertheless, the statutory damages  
25 available for Plaintiffs’ genetic privacy claims are significant, ranging from \$100 for inadvertent  
26

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27 <sup>16</sup> Settlement Class Members residing in California on August 11, 2023, are also members of the  
28 Statutory Subclass. Their applicable statutory claims are discussed below in section 10.

1 violations to \$150,000 or more for knowing or reckless violations. Although there is a relatively wide  
2 range of possible recoveries if the genetic privacy claims were successful at trial, given the statutory  
3 damages available for these claims, Plaintiffs estimate that any recoveries could be many orders of  
4 magnitude more than the settlement amount at the high end. Due to the aggregate value of the statutory  
5 claims, if successful, an award of statutory damages would likely face a due process challenge and  
6 potentially be significantly reduced. *See Wakefield v. ViSalus, Inc.* 51 F.4th 1109, 1123 (9th Cir. 2022)  
7 (finding that “aggregated statutory damages . . . are subject to constitutional limitation in extreme  
8 situations—that is, when they are ‘wholly disproportioned’ and ‘obviously unreasonable’ in relation  
9 to the goals of the statute and the conduct the statute prohibits,” *quoting St. Louis, I.M. & S. Ry. Co.*  
10 *v. Williams*, 251 U.S. 63, 67 (1919)). And here, regardless of any constitutional issues, the financial  
11 condition of the Defendant would likely prohibit satisfaction of any judgment under any of the  
12 statutory claims obtained through trial.

### 13 **9. Comparing the Strengths and Risks of the Other California Statutory Claims**

14 California Plaintiffs asserted claims under the California Confidentiality of Medical  
15 Information Act, the California Consumer Privacy Act, the California Customer Records Act, and the  
16 California Consumer Legal Remedies Act (Counts 14, 15, 16, and 18) based on 23andMe’s failure to  
17 take adequate security measures to store and protect its customers’ Personal Information. Available  
18 information—including 23andMe’s own disclosure of the Security Incident—supports Plaintiffs’  
19 claims. However, there remain significant risks with pursuing these claims through trial.

20 Although Plaintiffs believe they would demonstrate that the other California statutes apply to  
21 the claims of the California Plaintiffs and Subclass Members, 23andMe would likely contest whether  
22 the statutes apply to the information compromised in the Security Incident, whether all of the discrete  
23 requirements of the California statutory claims are satisfied, and whether these claims could be  
24 maintained on a classwide basis. This risk, and the due process issue addressed herein, merit a  
25 discount. Some of Plaintiffs’ California statutory claims entitle Plaintiffs to seek actual or statutory  
26 damages. Under California’s Consumer Privacy Act, for example, California Plaintiffs and Subclass  
27 Members are entitled to seek statutory damages up to \$750 per consumer. *See* Dkt. 78 at ¶ 702. As  
28

1 such, given the statutory damages available for these claims, Plaintiffs estimate that any verdict, were  
2 Plaintiffs successful, would be orders of magnitude more than the settlement amount. If Plaintiffs  
3 prevailed at trial on their CCPA or other California statutory claims, an award of statutory damages  
4 would likely face the same due process challenges addressed above. As such, the benefit Settlement  
5 Class Members would receive under the proposed Settlement Agreement appropriately accounts for  
6 the risks associated with continuing to litigate Plaintiffs' California statutory claims.

#### 7 **10. Comparing the Strengths and Risks of the Other State Statutory Claims**

8 Plaintiffs assert claims under other state statutes based on, among other things, 23andMe's  
9 failure to disclose the Security Incident in a timely and accurate fashion (Counts 30 and 37) and  
10 unauthorized disclosure of confidential healthcare records (Count 39). There remain significant risks  
11 in continuing to litigate these claims through trial, including that 23andMe would likely contest  
12 whether certain statutory requirements of each claim are satisfied. As such, there would remain a  
13 significant risk of unfavorable rulings as to one or more of these other state statutory claims. Further,  
14 even if Plaintiffs were successful at trial, to the extent prescribed statutory damages are not provided  
15 for, Plaintiffs would face significant challenges in proving damages, including challenges in  
16 quantifying the damages attributable to 23andMe's violations on a classwide basis for the same  
17 reasons as discussed above with respect to Plaintiffs' privacy and negligence-based claims.

18 Therefore, continued litigation over Plaintiffs' other state statutory claims carries risk, meriting  
19 a discount. Plaintiffs assert that there is a relatively wide range of possible recoveries if Plaintiffs'  
20 other state statutory claims were successful at trial, ranging from a significant fraction of the settlement  
21 amount at the low end to multiples the settlement at the high end. This amount would vary on factors  
22 including the number of Subclass Members included in each of the states covered by Plaintiffs' other  
23 state statutory claims. Given the merits-based and procedural risks discussed above, the benefit  
24 Settlement Class Members would receive under the proposed Settlement Agreement appropriately  
25 accounts for the risks associated with continuing to litigate Plaintiffs' other state statutory claims.<sup>17</sup>

26 \_\_\_\_\_  
27 <sup>17</sup> In addition to the claim-specific risks described above, some damages may be duplicative. While  
28 tenable arguments exist to the contrary, 23andMe could argue that damages for the contract, negligence,



1 **C. Further Litigation Would Be Uncertain, Expensive, Complex, and Lengthy**

2 Continuing this Litigation would be extremely expensive, complex, uncertain, and lengthy. In  
 3 this regard, “unless the settlement is clearly inadequate, its acceptance and approval are preferable to  
 4 lengthy and expensive litigation with uncertain results.” 4 A Conte & H. Newberg, *Newberg on Class*  
 5 *Actions*, § 11:50 at 155 (4th ed. 2002). Because data breach case law is still relatively undeveloped,  
 6 data breach cases are among the more risky and uncertain areas of class action litigation. *See In re*  
 7 *Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 317 (N.D. Cal. 2018) (“Data-breach litigation is in  
 8 its infancy with threshold issues still playing out in the courts.”). For example, “damages  
 9 methodologies in data breach cases are largely untested and have yet to be presented to a jury.”  
 10 *Hashemi v. Bosley, Inc.*, No. 21-946 PSG (RAOx), 2022 WL 2155117, at \*7 (C.D. Cal. Feb. 22, 2022).  
 11 As the *Hashemi* court noted, “it is difficult to estimate Plaintiffs’ expected recovery given the relative  
 12 dearth of precedent and exemplar cases that have proceeded to trial.” *Id.* Given these uncertainties,  
 13 “[c]ourts have noted that legal uncertainty supports approval of a settlement.” *In re Anthem*, 327  
 14 F.R.D. at 317. *See Browning v. Yahoo! Inc.*, No. C04-01463 HRL, 2007 WL 4105971, at \*10 (N.D.  
 15 Cal. Nov. 16, 2007) (noting that “legal uncertainties at the time of settlement—particularly those  
 16 which go to fundamental legal issues—favor approval.”).

17 In addition to the risks set forth above, there is a risk of unfavorable rulings at the motion to  
 18 dismiss and summary judgment stages, such as with respect to complex issues including injury,  
 19 damages, or statutory requirements for claims brought under relatively untested state privacy laws.  
 20 Moreover, there is the risk of an adverse jury verdict at trial. *See Meredith Corp. v. SESAC, LLC*, 87  
 21 F. Supp. 3d 650, 664 (S.D.N.Y. 2015) (approving settlement and noting that jury verdict “could have  
 22 turned on, among other factors, the persuasiveness of each side’s expert witnesses” and “the  
 23 justifications advanced by” the defendant for its practices). In particular, the complexity and number

24 \_\_\_\_\_  
 25 and privacy claims all compensate Plaintiffs for the same harm: injury from 23andMe’s failure to  
 26 securely maintain their sensitive Personal Information. If such an argument proves successful, damages  
 27 on the claims may not be stacked on top of each other. *See, e.g., Ambassador Hotel Co. v. Wei-Chuan*  
*Inv.*, 189 F.3d 1017, 1032 (9th Cir. 1999) (“[A] plaintiff may not receive multiple awards for the same  
 28 item of damage.”).

1 of issues involved would make presenting the case to the trier of fact and proving damages on a  
 2 classwide basis challenging, and it is possible that a jury might not reach a unanimous verdict on all  
 3 issues. While Plaintiffs believe they would be able to present a compelling case to a jury, the complex  
 4 and relatively novel issues at stake here create a wide range of potential outcomes. Finally, even if  
 5 Plaintiffs were to obtain a favorable jury verdict, 23andMe would still have arguments as to why this  
 6 Court, the Ninth Circuit, or the Supreme Court should reduce or overturn the verdict. Additionally,  
 7 23andMe's dire financial condition could result in the Settlement Class Members receiving no  
 8 compensation for the harms resulted from this Security Incident.

9 Resolving the action at this time saves the Parties the expenses of additional litigation and  
 10 substantially benefits the Class by providing meaningful relief now, without having to wait or face the  
 11 risks and uncertainties inherent with protracted litigation of the matter. Nearly all class action  
 12 settlements reflect tradeoffs and difficult choices. Here, the Parties' ability to reach a settlement  
 13 eliminates these risks by ensuring that Plaintiffs and Settlement Class Members receive a recovery  
 14 that is certain and immediate, and the total value of the benefits under the proposed Settlement  
 15 Agreement appropriately accounts for the risks of further protracted litigation.

## 16 V. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS

### 17 A. The Settlement Class Satisfies the Rule 23(a) Prerequisites

#### 18 1. The Class Is Sufficiently Numerous

19 Numerosity requires the proposed class to be so numerous that joinder is impracticable. Fed.  
 20 R. Civ. P. 23(a). Numerosity is generally satisfied when the class exceeds forty members. *See, e.g.,*  
 21 *Slaven v. BP Am., Inc.*, 190 F.R.D. 649, 654 (C.D. Cal. 2000); *Lagunas v. Young Adult Inst., Inc.*, No.  
 22 23-CV-00654-RS, 2024 WL 1025121, at \*3 (N.D. Cal. Mar. 8, 2024) (class of 299 employees  
 23 sufficiently numerous). The class here is made up of approximately 6.4 million individuals. SA ¶ 3.

#### 24 2. There Are Common Questions of Law and Fact

25 Commonality requires that the action involve "questions of law or fact common to the class."  
 26 Fed. R. Civ. P. 23(a)(2); see also *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 589 (9th Cir. 2012).  
 27 (characterizing commonality as a "limited burden" which "only requires a single significant question  
 28 of law or fact"). Where claims "derive from a common core of salient facts, and share many common

1 legal issues,” commonality is met. *Negrete v. Allianz Life Ins. Co. of N. Am.*, 238 F.R.D. 482, 488  
2 (C.D. Cal. 2006). The class claims primarily derive from 23andMe’s failure to implement basic data  
3 security policies and measures where it knew or should have known its existing policies and measures  
4 were inadequate. Thus, “whether [23andMe] employed sufficient security measures to protect the  
5 Settlement Class Members’ Personal Information from the Data Breaches lies at the heart of every  
6 claim.” *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-MD-02752-LHK, 2020 WL  
7 4212811, at \*3 (N.D. Cal. July 22, 2020). “Related factual questions about whether [23andMe] knew  
8 that its data security was inadequate and whether [it] timely disclosed and adequately responded to the  
9 Data Breaches also apply uniformly across the entire Settlement Class.” *Id.*

10 This uniform conduct raises common questions, resolution of which will generate common  
11 answers “apt to drive the resolution of the litigation” for the Class as a whole. *Wal-Mart Stores, Inc.*  
12 *v. Dukes*, 564 U.S. 338, 350 (2011). Though no judicial determination has been made, Interim Co-  
13 Lead Counsel believe it is likely that California law would likely be applied to the primary common  
14 law claims. 23andMe’s Terms of Service specify that California law applies to its Terms of Service,  
15 under which certain of the Settlement Class Members’ claims arise. 23andMe is headquartered in  
16 California, is the forum for disputes dictated by the Terms of Service, the activity and decisions which  
17 led to the Settlement Class Members’ damages occurred in California, and the documents and  
18 witnesses with information relevant to this matter are in California too.

19 Though Plaintiffs’ Consolidated Class Action Complaint includes numerous state consumer  
20 statutory and other claims, not all claims are likely to be pursued in this case for reasons analyzed  
21 herein. *Jabbari v. Wells Fargo & Co.*, 965 F.3d 1001, 1008 (9th Cir. 2020) (“Only rarely will a class  
22 assert every possible claim that might offer relief”).

23 The common legal and factual questions arising from Plaintiffs’ claims include whether  
24 23andMe owed a duty to the Settlement Class Members to exercise due care in safeguarding and  
25 preventing unauthorized access to their personal and genetic information; whether 23andMe breached  
26 that duty; whether 23andMe implemented and maintained reasonable data security procedures and  
27 practices commensurate with the sensitivity of the information being stored; whether 23andMe acted

1 negligently in connection with the monitoring and/or protecting of Settlement Class Members’  
2 personal and genetic information; whether 23andMe breached its contractual obligations to Settlement  
3 Class Members, and whether such breach caused harm; whether 23andMe’s actions constitute a  
4 violation of the applicable data privacy statutes of Alaska, California, Illinois, and Oregon; whether  
5 23andMe adequately addressed and fixed the vulnerabilities which permitted the Security Incident to  
6 occur; and whether Defendant caused Plaintiffs’ and Settlement Class Members’ damages. These more  
7 than suffice to meet the commonality requirement.

8 **3. The Settlement Class Representatives’ Claims are Typical of the Settlement Class**  
9 **Members’ Claims**

10 Fed. R. Civ. P. 23(a)(3) requires that the Settlement Class Representatives claims be typical of  
11 the claims of the proposed class. The test is whether other members of the class have the same or  
12 similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and  
13 whether the class members have been injured by the same course of conduct. *Ellis v. Costco Wholesale*  
14 *Corp.*, 657 F. 3d 970, 984 (9th Cir. 2011). Further, the typicality requirement is a “permissive  
15 requirement” and “requires only that Plaintiffs’ claims be ‘reasonably co-extensive,’ not ‘substantially  
16 identical’ with the proposed class members’ claims.” *In re Yahoo Mail Litig.*, 308 F.R.D. 577, 593  
17 (N.D. Cal. 2015) (quoting *Hanlon*, 150 F.3d at 1020). Where a plaintiff suffered a similar injury and  
18 other class members were injured by the same course of conduct, typicality is satisfied. *See Parsons*  
19 *v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014).

20 Here, the experiences of the Settlement Class Representatives match the experiences of the  
21 millions of other Settlement Class Members that make up the Settlement Class. 23andMe failed to  
22 adopt practices that would have prevented the cybercriminals from accessing the personal and genetic  
23 information of the members of the Settlement Class, and cybercriminals took advantage of those  
24 failures. Because the Settlement Class Representatives’ allegations involve the “same course of  
25 conduct,” which is “not unique to the named plaintiffs,” typicality is satisfied here. *Valliere v. Tesoro*  
26 *Ref. & Mktg. Co. LLC*, No. 17-CV-00123-JST, 2020 WL 13505042, at \*5 (N.D. Cal. June 26, 2020)  
27 (citing *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992)).

1           **4. The proposed Settlement Class Representatives and Class Counsel Will—and**  
2           **Have—Fairly and Adequately Protected the Interests of the Settlement Class**

3           Rule 23(a)(4) permits certification of a class action only if “the representative parties will fairly  
4 and adequately protect the interests of the class” which requires that the named plaintiffs (1) not have  
5 conflicts of interest with the proposed Class; and (2) be represented by qualified and competent  
6 counsel. *In re Volkswagen “Clean Diesel” Mktg. Sales Practices & Prod. Liab. Litig.*, 895 F.3d 597,  
7 607 (9th Cir. 2018). Both criteria are readily met here.

8           The proposed Settlement Class Representatives do not have any interests antagonistic to the  
9 other Settlement Class Members, whose interests they will continue to vigorously protect. *See, e.g.,*  
10 *In re Yahoo! Inc.*, 2020 WL 4212811, at \*4–5. The Settlement Class Representatives are aligned with  
11 Settlement Class Members as their interest is in proving that 23andMe should have prevented the theft  
12 of their personal and genetic information. And they are aligned in seeking remuneration from 23andMe  
13 for the resulting harm. In addition, each proposed Settlement Class Representative understands their  
14 duties as class representatives, has agreed to consider and protect the interests of absent Settlement  
15 Class Members, and has participated in this Litigation and Settlement. The proposed Settlement Class  
16 Representatives have provided their counsel with necessary factual information, reviewed pleadings,  
17 have had ongoing communications with their counsel regarding various issues pertaining to this case,  
18 and will continue to do so until the case closes. Their participation easily meets the adequacy  
19 requirement. *See Trosper v. Styker Corp.*, No. 13-CV-0607-LHK, 2014 WL 4145448, at \*43 (N.D.  
20 Cal. Aug. 21, 2014) (“All that is necessary is a ‘rudimentary understanding of the present action and .  
21 . . . a demonstrated willingness to assist counsel in the prosecution of the litigation.’” (quoting *In re*  
22 *Live Concert Antitrust Litig.*, 247 F.R.D. 98, 120 (C.D. Cal. 2007) (citation omitted))).

23           Interim Co-Lead Counsel are highly qualified lawyers who have successfully prosecuted high-  
24 stakes complex cases and consumer class actions. *See* Class Counsel Decl. ¶ 4. They have devoted the  
25 resources necessary to see this case through despite risk. *Id.* ¶ 5. Interim Co-Lead Counsel’s work on  
26 this case began months before their appointment and has included, since their appointment in their  
27 interim capacity, preparing a Consolidated Complaint, addressing issues of appropriate representative

1 plaintiffs, consulting with experts, evaluating ongoing informal discovery, preparing to and attending  
2 mediation, including analyzing documents produced in mediation, evaluating options for settlement  
3 benefits that would meet the needs of this Settlement Class, and reaching the proposed Settlement.  
4 They have been guided by the Settlement Class Members' interests throughout the management of  
5 this case and present this Settlement as in their best interests without reservation. *Id.* ¶ 5.

6 **B. The Settlement Class Satisfies Rule 23(b)(3)**

7 Rule 23(b)(3) requires that (i) “questions of law or fact common to class members predominate  
8 over any questions affecting only individual members” and (ii) that a class action is “superior to other  
9 available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).  
10 Both of these requirements are satisfied here.

11 **1. Common Issues of Law and Fact Predominate**

12 The predominance inquiry under Rule 23(b)(3) focuses on whether the “common questions  
13 present a significant aspect of the case and . . . can be resolved for all members of the class in a single  
14 adjudication.” *Hanlon*, 150 F.3d at 1022 (citation and quotation omitted). If so, “there is clear  
15 justification for handling the dispute on a representative rather than on an individual basis.” *Id.*  
16 (citation and quotation omitted). Even if just one common question predominates, “the action may be  
17 considered proper under Rule 23(b)(3) even though other important matters will have to be tried  
18 separately.” *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016) (footnotes omitted).

19 The common questions in this case, described above, can be resolved for all members of the  
20 Settlement Class in a single adjudication. 23andMe's data security policies were common to all  
21 Settlement Class Members, and whether 23andMe failed to properly secure their personal and genetic  
22 information can be answered on a classwide basis. Whether 23andMe was negligent, by virtue of its  
23 security practices, is a question that focuses on 23andMe's conduct and thus can be answered for the  
24 class as a whole. *See In re JUUL Labs, Inc., Mktg. Sales Practs. & Prod. Liab. Litig.*, 609 F. Supp. 3d  
25 942 (N.D. Cal. 2022) (explaining that claims that “require common proof of the defendant's conduct”  
26 are appropriate for class certification). Whether 23andMe failed to meet contractual obligations to  
27 keep Settlement Class Members' personal information private, and whether or not 23andMe could

1 have readily prevented this loss to the Settlement Class Members by taking action can be resolved  
2 classwide, using the same expert analysis, documentary evidence and testimony. *Abante Rooter &*  
3 *Plumbing, Inc. v. Pivotal Payments Inc.*, No. 3:16-cv-05486, 2018 WL 8949777 at \*5 (N.D. Cal. Oct.  
4 15, 2018) (“Predominance is satisfied because the overarching common question... can be resolved  
5 using the same evidence for all class members and is exactly the kind of predominant common issue  
6 that makes certification appropriate.”). Indeed, “the focus on a defendant’s security measures in a data  
7 breach class action ‘is the precise type of predominant question that makes class-wide adjudication  
8 worthwhile.’” *In re Yahoo! Inc.*, 2020 WL 4212811, at \*7 (quoting *In re Anthem*, 327 F.R.D. at 312).  
9 And whether or not the type of information released in this Security Incident is covered by the  
10 applicable statutes protecting genetic information can be determined by common evidence. Thus,  
11 common questions abound.

12 Rule 23(b)(3) also requires a class action to be “superior to other available methods for the fair  
13 and efficient adjudication of the controversy” and lists four non-exclusive factors relevant to a  
14 predominance finding: (A) the class members’ interests in individually controlling the prosecution or  
15 defense of separate actions; (B) the extent and nature of any litigation concerning the controversy  
16 already begun by or against class members; (C) the desirability or undesirability of concentrating the  
17 litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class  
18 action. The applicable factors weigh in favor of a predominance finding.

19 In this matter, any member of the Settlement Class who wants to control their own case can  
20 easily opt out of the Settlement to pursue arbitration or their own lawsuit and some will exercise that  
21 right. The actions of these individuals do not affect the predominance analysis here, as there are  
22 expected to be more than 6.3 million class members who will not have interest in seeking a separate  
23 action in arbitration or otherwise. There have been individuals, who through counsel have made  
24 demands for arbitration, though those numbers appear to be a very small percentage of the Settlement  
25 Class (far less than 1%). But even if that percentage increases, the efficiencies of collectively  
26 adjudicating the many common legal and factual questions, as well as the risks and expense of  
27 litigating this case weigh in favor of predominance. Moreover, there are two known class action cases  
28

1 and two multi-plaintiff cases arising out of this incident that are pending in the Santa Clara Superior  
2 Court awaiting a ruling on a petition for Judicial Council for coordinated proceedings. Those cases are  
3 in their early stages with a Case Management Conference scheduled for October 31, 2024. The  
4 plaintiffs in those cases are Settlement Class Members who may participate in the Settlement, or they  
5 may opt to request exclusion. The JPML has already made the decision to centralize the actions before  
6 this Court and made findings suggesting the desirability of concentrating the litigation of the claims  
7 in this forum. And where, as here, the court is deciding the certification in the settlement context, it  
8 need not consider manageability issues. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

## 9 **2. Class Treatment is Superior**

10 Rule 23(b)(3)'s "superiority" element "requires determination of whether the objectives of the  
11 particular class action procedure will be achieved in the particular case." *Hanlon*, 150 F.3d at 1023. A  
12 class action is the only reasonable method here to efficiently and fairly adjudicate Settlement Class  
13 Members' claims against 23andMe. See, e.g., *Phillips Petroleum Co v. Shutts*, 472 U.S. 797, 809  
14 (1985) ("Class actions...permit the plaintiffs to pool claims which would be uneconomical to litigate  
15 individually").

16 The sheer number of potential separate trials, were they to be pursued, also favors certification.  
17 Even if Settlement Class Members could afford individual litigation, the court system could not.  
18 Individualized litigation creates a potential for inconsistent or contradictory judgments and increases  
19 the delay and expense to all parties and the court system. By contrast, the class action device presents  
20 far fewer management difficulties, and provides the benefits of single adjudication, economy of scale,  
21 and comprehensive supervision by a single court. Thus, superiority of class treatment to the instant  
22 litigation is easily shown here.

## 23 **C. The Relief Offered in the Settlement Is More Than Adequate**

24 The Settlement benefits provide fair, reasonable and adequate relief for all Settlement Class  
25 Members. FRCP 23 (e) requires that a settlement seeking to bind absent class members must be fair,  
26 reasonable and adequate. Preliminary approval is appropriate if "the proposed settlement appears to  
27 be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not



1 improperly grant preferential treatment to class representatives or segments of the class, and falls  
2 within the range of possible approval.” *Sweet v. DeVos*, No. C 19-03674 WHA, 2020 WL 4876897,  
3 at \*1 (N.D. Cal. May 22, 2020) (quoting *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079  
4 (N.D. Cal. 2007)). The proposed settlement need not be ideal, but it must be fair and free of collusion,  
5 consistent with counsel’s fiduciary obligations to the class. *Hanlon*, 150 F. 3d at 1027. And “whether  
6 a settlement is fundamentally fair within the meaning of Rule 23(e) is different from the question  
7 whether the settlement is perfect in the estimation of the reviewing court.” *Lane v. Facebook, Inc.*,  
8 696 F. 3d 811, 819 (9th Cir 2012).

9         The cash value of the Settlement Fund is \$30 million. The benefits to the Class account for the  
10 multiple aspects of harm the Settlement Class Members have suffered, and the damages caused by the  
11 exposure of Settlement Class Members’ Personal Information are squarely addressed by the settlement  
12 benefits. Like most data breach settlements, this Settlement compensates those that suffered financial  
13 loss as a result of fraud. But given the unique allegations of harm here, this Settlement also  
14 compensates Settlement Class Members who spent money on counseling for anxiety or emotional  
15 unrest due to the sensitive nature of the information exposed in this incident. Moreover, to the extent  
16 any Settlement Class Member spent money to increase their physical security, those expenses are  
17 reimbursable under the Settlement. This unique reimbursement plan is directed toward the harms  
18 suffered by the Settlement Class Members here.

19         Further, all Settlement Class Members residing in states that provide statutory damages for  
20 exposure of genetic information on August 11, 2023 (the date it was first reported genetic information  
21 was downloaded onto certain dark web sites) are entitled to claim a Statutory Cash payment. And the  
22 small number of those Settlement Class Members that had health information compromised will  
23 receive \$100, in addition to any other payments for which they are eligible. Importantly, the Settlement  
24 Fund will be used to provide all Settlement Class Members with a unique and robust monitoring plan  
25 to assist in mitigating the damage caused by this particular incident. Thus, the Settlement provides fair  
26 and adequate relief to all Settlement Class Members because the relief is tailored to the types of injuries  
27 suffered. *In re Anthem*, 327 F.R.D. at 332 (“A plan of allocation that reimburses class members based  
28

1 on the type and extent of their injuries is generally reasonable”) (citing cases).

2 The Settlement also provides for Business Practice Commitments which will provide enhanced  
3 security for Settlement Class Members’ Personal Information. SA ¶ 70. These may not be available  
4 through a trial of this matter, and they include enhanced password protection, mandated two or  
5 multifactor authentication; annual security training; annual computer scans and cybersecurity audits;  
6 and Information Security Program and Retention Policy changes. This is a benefit to all Settlement  
7 Class Members, provided and paid for solely by 23andMe. Finally, the Settlement will provide clear  
8 instructions for Settlement Class Members on how to delete their data with a link in the Notice to  
9 where they can request such deletion.

10 This is a significant result for all Settlement Class Members. In fact, “other courts have  
11 approved settlements in privacy and security cases when each class member received just a few dollars  
12 or less.” *Carter v. Vivendi Ticketing US LLC*, No. SACV2201981CJCDFMX, 2023 WL 8153712, at  
13 \*5 (C.D. Cal. Oct. 30, 2023); *see, e.g., In re Yahoo! Inc.*, 2020 WL 4212811, at \*10 (approving a  
14 Settlement Fund of \$117.5 million with a settlement class size of approximately 194 million and  
15 collecting cases where recovery was only a few dollars per person or less); *Hashemi*, 2022 WL  
16 2155117, at \*7 (collecting cases with estimated settlement values of less than \$1 per class member).  
17 Some privacy class actions have even settled for non-monetary relief alone. *See, e.g., Campbell v.*  
18 *Facebook Inc.*, 2017 WL 3581179, at \*8 (N.D. Cal. Aug. 18, 2017) (granting final approval of  
19 settlement providing for declaratory and injunctive relief in litigation alleging Facebook engaged in  
20 user privacy violations), *aff’d*, 951 F.3d 1106 (9th Cir. 2020); *In re Google LLC St. View Elec.*  
21 *Comm’ns Litig.*, 611 F. Supp. 3d 872 (N.D. Cal. 2020) (granting final approval of settlement  
22 providing injunctive relief and creating a non-distributable *cy pres* settlement fund in litigation  
23 alleging Google violated privacy by illegally gathering Wi-Fi network data).

24 **1. The Settlement Is Fair and Reasonable in Light of the Defendant’s Financial**  
25 **Condition.**

26 As stated earlier, a factor to consider when evaluating any class action settlement is whether  
27 the defendant is in a precarious financial situation. This is a factor that can weigh heavily in favor of  
28 approving a proposed settlement. *See, e.g., Cavazos v. Salas Concrete, Inc.*, No.

1 119CV00062DADEPG, 2022 WL 2918361, at \*5 (E.D. Cal. July 25, 2022) (finding that defendant’s  
2 threatened insolvency and the possibility that the class members would recover nothing weighed  
3 heavily in favor of settlement); *Singh v. Roadrunner Intermodal Servs., LLC*, No.  
4 115CV01497DADBAM, 2018 WL 4382202, at \*3 (E.D. Cal. Sept. 13, 2018) (“Having voiced a  
5 concern about defendants’ declining financial condition and its possible default at every stage of the  
6 settlement process, the court finds plaintiffs’ counsel’s concerns to be both legitimate and  
7 persuasive”).

8 These financial struggles reveal 23andMe is a company that could not withstand a significant  
9 judgment. So, the Settlement obtained here is not only prudent, but is a significant victory for the  
10 Settlement Class Members. Class Counsel Decl. ¶ 32.

## 11 **2. The Notice and Claims Process is Fair and Reasonable.**

12 Next, the Court must consider “the effectiveness of any proposed method of distributing relief  
13 to the class, including the method of processing class-member claims.” Fed. R. Civ. P. 23(e)(2)(C)(ii).  
14 “Often it will be important for the court to scrutinize the method of claims processing to ensure that it  
15 facilitates filing legitimate claims.” Fed. R. Civ. P. 23 advisory committee’s note to 2018 amendment.  
16 “A claims processing method should deter or defeat unjustified claims, but the court should be alert to  
17 whether the claims process is unduly demanding.” *Id.*

18 Here, the relief distribution is straightforward. Settlement Class Members are able to easily  
19 complete and submit either online or by mail, a simple Claim Form covering all available types of  
20 relief. Any required documentation can be uploaded to the Settlement Website or sent to the Claims  
21 Administrator by mail. In addition, Settlement Class Members are encouraged to use a Claim Form to  
22 enroll in Privacy Shield to receive the maximum length of that benefit, though valid enrollments will  
23 be accepted at any time during the three years the services are available. SBP, ¶ 12(d). Cash payments  
24 will be made by digital payment or check, at the Settlement Class Member’s election, and codes to  
25 activate Privacy Shield will be provided to Settlement Class Members following the Effective Date as  
26 set forth in the SBP ¶¶ 12-13. Thus, the procedures for submitting a claim or enrolling in Privacy  
27 Shield are not unduly demanding and the proposed method of distributing relief is adequate.

1           **3. Interim Co-Lead Counsel Believes the Settlement Is an Outstanding Result.**

2           “Great weight is accorded to the recommendation of counsel, who are most closely acquainted  
3 with the facts of the underlying litigation.” *Forsyth v. HP Inc.*, No. 16-CV-04775-EJD, 2024 WL  
4 1354551, at \*5 (N.D. Cal. Mar. 29, 2024) (quoting *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*,  
5 221 F.R.D. 523, 528 (C.D. Cal. 2004)). Here, Interim Co-Lead Counsel, who have decades of  
6 experience litigating class actions, believe that the Settlement reflects a significant success. Class  
7 Counsel Decl. ¶ 18. Furthermore, as discussed previously, the unique nature of this Security Incident  
8 and Plaintiffs’ damages theories and claims do carry a risk that this Court, a jury, or an appellate court  
9 may find them unavailing. “Approval of a class settlement is appropriate when ‘there are significant  
10 barriers plaintiffs must overcome in making their case.’” *Betancourt v. Advantage Hum. Resourcing,*  
11 *Inc.*, No.14-CV-01788-JST, 2016 WL 344532, at \*4 (N.D. Cal. Jan. 28, 2016). When Defendant’s  
12 financial condition is considered, Interim Co-Lead Counsel individually and collectively believe this  
13 is an outstanding result for the Class.

14           **4. The Settlement Also Satisfies the “Bluetooth” Factors.**

15           Prior to class certification, there is an even greater potential for a breach of fiduciary duty owed  
16 the class during settlement. Accordingly, such agreements must withstand an even higher level of  
17 scrutiny for evidence of collusion or other conflicts of interest than is ordinarily required under Rule  
18 23(e) before securing the court’s approval as fair. *In re Bluetooth* , 654 F.3d at 946. At the preliminary  
19 approval stage, courts are directed to consider the three factors set out in *In re Bluetooth*. *See id.* at  
20 947. Evaluation of these factors assists the Court in determining whether Plaintiffs’ counsel have  
21 “allowed pursuit of their own self-interests and that of certain class members to infect the  
22 negotiations.” *Id.* at 947. Here, evaluation of the *Bluetooth* factors further supports granting  
23 preliminary settlement approval.

24           Here, all Settlement Class Members will receive benefits of value. This is not a settlement in  
25 which the entire class will “receive[] no monetary distribution but class counsel are amply rewarded.”  
26 *Id.* In fact, it is expected that nearly \$20,000,000 in cash payments will be distributed. In addition,  
27 Class Counsel anticipates requesting a fee of 25% of the Settlement Fund as attorneys’ fees plus  
28

1 reimbursement of reasonable expenses. The Settlement Agreement does not include a “clear sailing”  
2 provision. *Id.* Rather, all attorneys’ fees will be payable solely from the Settlement Fund in a  
3 percentage determined by the Court. SA ¶ 97. The fees are therefore not being paid by 23andMe in  
4 exchange for Plaintiffs’ acceptance of an unfair class settlement. *In re Bluetooth*, 654 F.3d at 947.  
5 Further, this is a non-reversionary settlement, reached through arm’s length negotiations and under no  
6 circumstances will 23andMe receive any of the settlement funds back. The entire Settlement Fund,  
7 less notice and administration, taxes, attorneys’ fees and costs, will be utilized to provide cash and  
8 other benefits to claimants. SA ¶ 59. Any residual funds available due to uncashed or unclaimed  
9 benefits will be used to fund additional months of Privacy Shield for the benefit of the Settlement  
10 Class Members. SBP ¶ 8. Thus, the *Bluetooth* factors are more than satisfied here.

11 **VI. THE PROPOSED NOTICE PROGRAM, SETTLEMENT ADMINISTRATOR, AND**  
12 **PROCESS FOR OPT-OUTS AND OBJECTIONS SHOULD BE APPROVED**

13 **A. The Proposed Notice Plan**

14 **1. Class Notice**

15 Rule 23 requires the Court to direct the best notice practicable to all class members who would  
16 be bound by a proposed settlement. *See* Fed. R. Civ. P. 23(c)(2)(B), (e)(1). The proposed Notice plan  
17 meets those standards. *See generally* Admin. Decl. Notice will be effectuated the following ways: (i)  
18 via email using the same email list 23andMe used to notify its affected customers of the Security  
19 Incident; (ii) where an email address is unavailable, via direct mail notice to the mailing address  
20 23andMe used to notify its affected customers of the Security Incident; (iii) by notice provided through  
21 23andMe’s website and mobile application to the Settlement Class Members upon logging into their  
22 accounts on the website or mobile application; and (iv) the media plan as implemented by the  
23 Settlement Administrator. SA ¶ 75.

24 The Settlement Administrator will establish the Settlement Website. *Id.* ¶¶ 78, 100(g). The  
25 Settlement Website will contain an online claims submission portal, FAQs, and downloadable copies  
26 of important case documents, including: (1) Class Notice and Claim Form; (2) the Settlement  
27 Agreement; (3) Plaintiffs’ Consolidated Complaint; (4) Plaintiffs’ Motion for Preliminary Approval  
28 of Class Action Settlement; (5) Order Granting Preliminary Approval; and, when filed, (6) Plaintiffs’

1 Motion for Attorneys’ Fees, Litigation Expenses and Service Awards, Plaintiffs Motion for Final  
2 Approval of Class Action Settlement and any Orders thereon. *Id.*

3 The Settlement Administrator will establish a toll-free help telephone line with information  
4 responsive to frequently asked questions about the Settlement and will provide Settlement Class  
5 Members the opportunity to request a call back or leave a message requesting assistance. The number  
6 shall be included in the Class Notice and posted on the Settlement Website. The Notice and Claims  
7 Administrator will establish and maintain a P.O. Box and email inbox, as well as provide mailed paper  
8 copies of the Class Notice and Claim Form upon request. *Id.*

9 **2. CAFA Notice**

10 The Notice and Settlement Administrator, at the direction of 23andMe, will provide notice  
11 pursuant to the Class Action Fairness Act (“CAFA”) within ten (10) days after the Settlement  
12 Agreement is filed with the Court. SA ¶ 76.

13 **B. The Settlement Administrator**

14 **1. The Settlement Administrator Selection Process**

15 Interim Co-Lead Counsel propose Verita (formally KCC) as the Notice and Claims  
16 Administrator. They do so only after evaluating bids from nine prospective settlement administrators.  
17 Class Counsel Decl. ¶ 63. Interim Co-Lead Counsel discussed and received bids from these nine  
18 prospective administrators for the methods of notice contemplated in this case based on the Settlement  
19 Class Member data available, including email, mail, mobile application, and media notice. *Id.* Only  
20 after receiving and evaluating the revised bids did Interim Co-Lead Counsel select Verita.

21 Collectively, Interim Co-Lead Counsel have used Verita as a settlement administrator on 2  
22 occasions in the past two years, as detailed in their Declaration. *Id.* ¶ 65; *see also* Admin. Decl. ¶ 9.  
23 Verita has considerable experience as the appointment settlement administrator in large data breach  
24 class action settlements. Admin. Decl. ¶¶ 8, 10. In its declaration, Verita details the extensive data  
25 security measures it has established to securely handle Settlement Class Members’ data. Admin. Decl.  
26 ¶¶ 41-45. It also maintains comprehensive insurance coverage, including sufficient Errors &  
27 Omissions coverage. Admin. Decl. ¶ 46. The Parties would not have selected Verita absent their  
28 comfort with its procedures for securely handling class member data.

1 Verita has agreed to cap the costs of notice and administration between \$727,000 and  
2 \$1,038,000, depending on the claims rate, the percentage of online claims, and the percentage of  
3 claimants who choose digital payments. Admin. Decl. ¶ 49. The costs will be paid out of the Settlement  
4 Fund. SA ¶ 59. The estimated costs are reasonable when compared to the value of the Settlement and  
5 the size of the Settlement Class, including the anticipated engagement by the Class as set forth below.

## 6 **2. The Settlement Administrator's Estimated Claims Rate**

7 Estimating a claims rate is complex. However, the Settlement Administrator has estimated that  
8 there will be between a 5-10% claims rate based on its experiences in other data breach cases. Admin.  
9 Decl. ¶ 37. The Notice Plan proposed here is intended to maximize the claims rate and encourage as  
10 much Settlement Class Member participation as possible. *See generally* Admin. Decl. ¶¶ 15-32.

## 11 **C. Opt-Outs and Objections: Timeline, Instructions, and Forms**

12 The proposed Class Notice advises Settlement Class Members of their right (i) to opt out of  
13 the Settlement or (ii) to object to the Settlement, to Class Counsel's Motion for Attorneys' Fees, or to  
14 Service Awards to the Class Representatives, and (iii) of the associated deadlines. Admin. Decl. Exs.  
15 1, 2, 4. The proposed schedule ensures that Settlement Class Members have at least 95 days from the  
16 order granting preliminary approval to opt out or object to the Settlement, with at least 35 days to opt  
17 out or object to the motion for attorneys' fees and expenses. N.D. Cal. Procedural Guidance ¶ 9.

18 The opt-out and objection instructions are in plain language and clearly prompt those who wish  
19 to opt-out or to object to provide the specific information each action requires. Class Counsel Decl.  
20 ¶ 68; Admin. Decl. Exs. 1, 2, 4. The Class Notice clearly informs Settlement Class Members of the  
21 Opt-Out Deadline, how to opt-out, the consequences of opting out, and requires that they supply only  
22 the information needed to opt out of the Settlement. Admin. Decl. Exs. 1, 2, 4; SA ¶¶ 80-84. Similarly,  
23 the Class Notice informs Settlement Class Members about how to send their written objections to the  
24 Court or file in person with the Court (or if represented by counsel to have counsel e-file), tells them  
25 that the Court can only approve or deny the Settlement and cannot change its terms, and clearly  
26 identifies the Objection Deadline. Class Counsel Decl. ¶ 69; Admin. Decl. Exs. 1, 2, 4.

27 The Settlement Agreement also provides for a preliminary injunction to enjoin ongoing  
28

1 litigation and arbitrations against 23andMe until such time as the Settlement Class Member opts-out  
2 of the Settlement after receiving Notice. SA ¶ 73(h). This injunction is within the Court’s  
3 jurisdiction pursuant to Federal Rule 23(d), which “vests a district court with the authority and  
4 discretion to protect the interests and rights of class members and to ensure its control over the integrity  
5 of the settlement approval process.” *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1025 (9th Cir.  
6 1998). The proposed injunction tracks similar preliminary injunctions approved by this Court in  
7 granting preliminary approval of class action settlements. *See, e.g., Roberts v. AT&T Mobility LLC*,  
8 No. 3:15-cv-03418-EMC (N.D. Cal. Mar. 31, 2021). In order to protect this MDL Settlement and the  
9 Court’s jurisdiction, and particularly given 23andMe’s financial position, Plaintiffs support the entry  
10 of the preliminary injunction in the proposed Preliminary Approval Order but note that the provision  
11 is severable from the remainder of the Settlement Agreement. SA ¶ 105.

## 12 VII. CONCLUSION

13 The proposed Settlement is immediate, substantial, and fair. It achieves the goals of the  
14 Litigation, benefits the entire Settlement Class, and accounts for the risks and uncertainties of  
15 continued, vigorously contested litigation and 23andMe’s financial position. Plaintiffs therefore are  
16 pleased to present the Settlement to the Court for its consideration. Plaintiffs respectfully request that  
17 the Court preliminarily approve the \$30 million non-reversionary Settlement, certify the Settlement  
18 Class, appoint the undersigned as Class Counsel and the Named Plaintiffs as Settlement Class  
19 Representatives, order dissemination of Class Notice to Settlement Class Members in accordance with  
20 the proposed Notice Plan, set a date for the Final Approval Hearing, and stay related actions as set  
21 forth in the proposed order.



**PROPOSED FINAL APPROVAL HEARING SCHEDULE**

Plaintiffs' [Proposed] Order granting Preliminary Approval of Class Action Settlement, filed herewith, includes the following proposed schedule for the approval process:

EVENT	PROPOSED TIME FOR COMPLIANCE
23andMe shall serve or cause to be served the notice required by the CAFA	10 days following the filing of the Motion for Preliminary Approval
23andMe shall deposit the Notice Payment into the Qualified Settlement Fund for purposes of facilitating the Notice Program	10 days following the Preliminary Approval Order
23andMe shall, for the purpose of facilitating Notice, provide or cause to be provided to the Notice and Claims Administrator information about the Settlement Class Members as set forth in SA ¶ 75 to effectuate the Notice Program	20 days following the Preliminary Approval Order
Notice Program substantial completion deadline ("Notice Deadline")	60 days following the Preliminary Approval Order
Class Counsel shall file a motion for fees, expenses, costs, and Service Awards	35 days before the Objection Deadline (60 days following the Preliminary Approval Order)
Deadline for objections and opt-outs ("Objection Deadline and Opt-Out Deadline")	35 days after the Notice Deadline (95 days following the Preliminary Approval Order)
Notice and Claims Administrator shall provide a final report to Class Counsel that summarizes the number of opt-outs received to date	10 days after the Opt-Out Deadline (105 days following the Preliminary Approval Order)
Class Counsel shall file all papers in support of the application for the Final Approval Order and Final Judgment	55 days after the Notice Deadline (115 days following the Preliminary Approval Order)
Deadline for submitting a claim ("Claims Deadline")	90 days from the Notice Deadline (150 days following the Preliminary Approval Order)
Deadline for 23andMe to report on compliance with Business Practice Commitments	14 days before Final Approval Hearing
Hearing on Final Approval of the Settlement	At least 35 days after the filing of Motion for Final Approval (Civil LR 7-2(a))

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RESPECTFULLY SUBMITTED this 12th day of September, 2024.

/s/ Gayle M. Blatt  
Gayle M. Blatt (SBN 122048)  
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*Interim Co-Lead Counsel*

**CERTIFICATE OF SERVICE**

I, Cass L. Lazar, hereby certify that on September 12, 2024, I electronically filed the foregoing with the Clerk of the United States District Court for the Northern District of California using the CM/ECF system, which shall send electronic notification to all counsel of record.

*/s/ Cass L. Lazar*

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Cass L. Lazar

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# **Exhibit A**

**CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

**EXECUTION COPY**

This Class Action Settlement Agreement and Release, dated as of September 5, 2024, is made and entered into by and among the following Settling Parties: the Settlement Class Representatives, individually and on behalf of the Settlement Classes, by and through their counsel of record, Norman E. Siegel, Gayle M. Blatt, and Cari C. Laufenberg (together “Class Counsel”) on one hand; and 23andMe, Inc. (“23andMe,” or “Defendant”), by and through its counsel of record, Ian C. Ballon and Rebekah S. Guyon of Greenberg Traurig LLP (“23andMe’s Counsel”) on the other hand (collectively, the “Parties” or “Settling Parties”). The Settlement Agreement is subject to Court approval and is intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle the consolidated action *In Re: 23andMe, Inc., Customer Data Security Breach Litigation*, MDL 3098, Case No. 24-md-03098-EMC (the “Litigation”) subject to the terms and conditions herein.

**RECITALS**

1. In early October 2023, 23andMe announced it had become aware that certain customer profile information was accessed from certain individual 23andMe.com user accounts without authorization (the “Security Incident”).

2. After the announcement of the Security Incident, numerous putative class action lawsuits were filed against 23andMe alleging that 23andMe had failed to properly protect Personal Information in accordance with its responsibilities, had inadequate data security protocols, was unjustly enriched by the use of Personal Information of the impacted individuals, violated various state genetic information privacy statutes and other state consumer statutes, failed to provide adequate notice pursuant to various breach notification statutes or common law duty, invasion of privacy and other claims related to the Security Incident.

3. 23andMe’s investigation determined the threat actor downloaded information without authorization relating to approximately 6.4 million natural persons in the United States.

4. On April 11, 2024, the Judicial Panel on Multidistrict Litigation centralized the litigation before the Honorable Edward M. Chen of the Northern District of California for coordinated or consolidating pretrial proceedings, where nearly 40 putative class action lawsuits were pending.

5. On June 5, 2024, the Court appointed Norman E. Siegel, Cari C. Laufenberg and Gayle M. Blatt to serve as interim co-lead Class Counsel, authorizing them to pursue the Litigation on behalf of the Plaintiffs, and to engage in appropriate settlement negotiations on behalf of the Plaintiffs and the putative class members, which now comprise the Settlement Class. ECF 62.

6. Experts were engaged by Class Counsel to evaluate and support Class Counsel in their efforts in the Litigation.

7. Two in person mediations were held in this case with Randall Wulff in January and March 2024. On June 5, 2024, Class Counsel and Defendant were directed by the Court to coordinate with Mr. Wulff for further attempts at resolution. ECF 62.

8. The Parties had exchanged certain information in preparation for the mediation sessions before Randall Wulff and continued discussions through June 26, 2024, when an additional mediation session was held. The arm’s length mediation sessions resulted in a mediator’s proposal for resolution of Plaintiffs’ and the putative classes’ claims against Defendant.

9. On June 26, 2024, Plaintiffs filed their Consolidated Class Action Complaint (“Complaint”) against 23andMe, asserting numerous common law and statutory claims. ECF 78.

10. 23andMe denies the claims and allegations set forth in the Complaint, denies that it failed to properly protect the Personal Information of its consumers and users, and further denies the viability of Settlement Class Representatives' claims for statutory damages under the California Consumer Privacy Act (CCPA) (Cal. Civ. Code §§ 1798.150, et seq.); the California Medical Information Act (CMIA) (Cal. Civ. Code §§ 56, et seq.); Alaska Stat. § 18.13.010, et seq.; the Illinois Genetic Information Privacy Act (GIPA) (410 ILCS 513, et seq.); and the Oregon Genetic Privacy Law (OGPL) (Or. Rev. Stat. §§ 192.531, et seq.).

11. On July 12, 2024, all Parties accepted the mediator's proposal, reaching an agreement in principle to resolve this Litigation as outlined herein.

12. The acceptance of the mediator's proposal resulted in the July 29, 2024, execution of a term sheet containing the material terms of the Settlement.

13. 23andMe denies any wrongdoing whatsoever, and this Agreement shall in no event be construed or deemed to be evidence of or an admission or concession on the part of 23andMe with respect to any claim of any fault or liability or wrongdoing or damage whatsoever, any infirmity in the defenses that 23andMe has asserted or would assert, or to the requirements of Federal Rule of Civil Procedure 23. Nonetheless, 23andMe has concluded that further conduct of the Litigation would be protracted, burdensome and expensive, and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

14. Based upon their substantial investigation and informal discovery, including analysis as to the type of Personal Information accessed, length and risk of further proceedings, the financial condition of 23andMe, evaluation of the strengths and weaknesses of each of the Parties' claims and defenses, the uncertainty and delay of trial and appeals, Class Counsel and the Settlement Class Representatives have concluded that the terms and conditions of this Agreement are fair, reasonable and

adequate and are in their best interests and the interests of the Settlement Class, and have agreed to settle the claims that were asserted in the Litigation pursuant to the terms and provisions of this Agreement, subject to Court approval.

15. Pursuant to these terms, this Settlement Agreement provides for the resolution of all claims and causes of action asserted, as set forth in ¶ 37, against 23andMe and the Released Persons arising out of the Security Incident, by and on behalf of the Settlement Class Representatives and Settlement Class Members and any other such actions by and on behalf of any other consumers and putative classes of consumers originating, or that may originate, in jurisdictions in the United States against 23andMe relating to the Security Incident.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the Settlement Class Representatives, individually and on behalf of the Settlement Class, Class Counsel, and 23andMe that, subject to the approval of the Court, when the Judgment becomes final, the Litigation and the Released Claims shall be finally and fully compromised, settled, and released, and the Litigation shall be dismissed with prejudice as to the Settling Parties, the Settlement Class, and the Settlement Class Members, except those Settlement Class Members who lawfully opt out of the Settlement Agreement, and subject to the terms and conditions of this Settlement Agreement.

## **I. DEFINITIONS**

As used in the Settlement Agreement, the following terms have the meanings specified below:

16. “Agreement” or “Settlement Agreement” means this agreement.

17. “Approved Claims” means Settlement Claims found to be timely and valid, in an amount approved by the Notice and Claims Administrator.



18. “Business Practice Commitments” means the undertakings set forth in Section IV.

19. “Claims Administration” means the processing and payment of claims received from Settlement Class Members and the distribution of settlement benefits by the Notice and Claims Administrator.

20. “Effective Date” means the occurrence of all of the following events: (i) the settlement pursuant to this Settlement Agreement receives final approval by the Court; (ii) the Court has entered a Judgment; and (iii) the time to appeal or seek permission to appeal from the Judgment has expired or, if appealed, the appeal has been dismissed in its entirety, or the Judgment has been affirmed in its entirety by the court of last resort to which such appeal may be taken, and such dismissal or affirmance has become no longer subject to further appeal or review. Notwithstanding the above, any order modifying or reversing any attorneys’ fee award or service award made in this case shall not affect whether the Judgment is final or any other aspect of the Judgment.

21. “Final Approval Hearing” means the hearing the Court will conduct to determine whether the Settlement is fair, reasonable and adequate in accordance with Federal Rule of Civil Procedure 23 and whether to enter a Final Approval Order and Judgment. The Final Approval Order and Judgment shall be entered not earlier than ninety (90) days after the mailing of the CAFA notices to ensure compliance with 28 U.S.C. § 1715.

22. “Final Approval Order and Judgment” means an Order and Judgment that the Court enters after the Final Approval Hearing, which among other things, finally approves the Settlement and Agreement, finally certifies the Settlement Classes for settlement purposes, dismisses the claims in the Litigation with prejudice, releases the Released Parties from the Released Claims as set forth herein, enjoins and bars the Releasing Parties from asserting any of the Released Claims, including during the pendency of any appeal from the Final Approval Order and Judgment, includes as an

exhibit a list of individuals who timely and validly opted out of the Settlement, and satisfies all aspects of the settlement-related provisions of Federal Rule of Civil Procedure 23.

23. “Judgment” means a judgment rendered by the Court.

24. “Notice and Claims Administrator” or “Claims Administrator” or “Administrator” means an independent settlement administrator and notice provider for the settlement with recognized expertise in class action notice and claims generally and data security litigation specifically, as may be jointly agreed upon by the Settling Parties and approved by the Court.

25. “Notice and Claims Administration Costs” means the costs associated with or arising from Notice and Claims Administration.

26. “Notice Deadline” means 60 days after issuance of the Court’s Order Granting Preliminary Approval of Class Action Settlement.

27. “Notice Payment” means the amount to be determined by the Notice and Claims Administrator to effectuate the Notice Plan.

28. “Notice Plan” or “Notice Program” or “Notice” means the herein-described notice of the class action settlement and its benefits, the opportunity to opt out or object, which shall be emailed to the class list provided by 23andMe and mailed where no email address is available, and is also provided to the Class through 23andMe’s website, and mobile application upon Class Member log in.

29. “Objection Deadline” means the date identified in the Preliminary Approval Order by which a Settlement Class Member must serve a written objection to the Settlement in accordance with ¶¶ 89-93 and the other related terms of this Settlement Agreement. The Objection Deadline shall be 35 days after the Notice Deadline, such date being subject to approval or modification of the Court.

30. “Opt-Out Deadline” means the date identified in the Preliminary Approval Order by which a Settlement Class Member must mail or otherwise transmit their requests with the Notice and Claims Administrator in accordance with ¶¶ 80-85 and other related terms of the Settlement Agreement in order to be excluded from the Settlement Class. The Opt-Out Deadline shall be 35 days after the Notice Deadline, such date being subject to approval or modification of the Court.

31. “Party” or “Parties” means the Settlement Class Representatives, on behalf of themselves and the Settlement Classes and 23andMe.

32. “Parties’ Counsel” means Class Counsel and 23andMe’s Counsel.

33. “Person” means an individual, corporation, partnership, limited partnership, limited liability company or partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity, and their respective spouses, heirs, predecessors, successors, representatives, or assignees.

34. “Preliminary Approval Order” means the order preliminarily approving the Settlement Agreement and ordering that notice be provided to the Settlement Class, materially in the form of the proposed Preliminary Approval Order attached as Exhibit 1.

35. “Personal Information” means information that is or could reasonably be associated with, whether on its own or in combination with other information, a natural person, or that is or could reasonably be used, whether on its own or in combination with other information, to identify, locate, or contact a natural person, including, but not limited to, name, sex, date of birth, genetic information, predicted relationships with genetic matches, ancestry reports, ancestors’ birth locations and family names, family tree information, and geographic location.

36. “Qualified Settlement Fund” means the interest-bearing escrow account at a bank, or another financial institution approved by Class Counsel and 23andMe’s Counsel, which shall be maintained pursuant to Treasury Regulation § 1.468B-1, *et seq.* into which 23andMe will deposit \$30,000,000, with the Notice Payment deposited as provided below and the remainder of which shall be deposited no later than ten (10) days after the issuance of a Final Approval Order, from which all monetary and other compensation to the Settlement Class and certain other expenses shall be paid in accordance with this Agreement.

37. “Released Claims” shall collectively mean any and all claims and causes of action, both known and unknown, including, without limitation, any causes of action under California Civil Code §§ 56, *et seq.*, 1710, *et seq.*, 1750, *et seq.*, 1798.80 *et seq.*, 1798.150, *et seq.*; Cal. Bus. & Prof. Code §§ 17200, *et seq.*; Cal. Pen. Code §§ 502; 410 ILCS 513, *et seq.*; 815 ILCS 505; Alaska Stat. §§ 18.13.010, *et seq.*; Or. Rev. Stat. §§ 192.531, *et seq.*; Mo. Rev. Stat. §§ 407.010, *et seq.*; Wash. Rev. Code §§ 19.255.010, *et seq.*; Wis. Stat. §§ 100.18, 146.81, *et seq.*; Mass. Gen. Laws Ch. 70G, 93A, *et seq.*; 6 Del. Code §§ 2513 *et seq.*; Fla. Stat. §§ 501.201 *et seq.*; GA. Code. Ann. §§ 10-1-370 *et seq.*; §§ 10-1-399 *et seq.*; Maryland Commercial Law Code §§ 13-1010 *et seq.*; N.J. Stat. Ann. §§ 56.8-1 *et seq.*; N.Y. Gen. Bus. Law §§ 349 *et seq.*, N.C. Gen. Stat. §§ 75-1.1 *et seq.*; 73 PA. Cons. Stat. §§ 201-2 & 201-3; Tenn. Code Ann. §§ 27-18-2107; Tex. Bus. & Com. Code Ann. §§ 17.41 *et seq.*; VA. Code §§ 59.1-198 to 59.1.207; Wash. Rev. Code. §§ 19.86.020 *et seq.*; and all similar statutes in effect in any states in the United States as defined herein; negligence; negligence per se; breach of contract; breach of implied contract; breach of fiduciary duty; breach of confidence; invasion of privacy; misrepresentation (whether fraudulent, negligent or innocent); unjust enrichment; conversion; bailment; threat assessment and monitoring; failure to provide adequate notice pursuant to any breach notification statute or common law duty; and including, but not limited to, any and all claims for damages, injunctive relief, disgorgement,

declaratory relief, equitable relief, attorneys' fees and expenses, pre-judgment interest, credit monitoring services, the creation of a fund for future damages, statutory damages, punitive damages, special damages, exemplary damages, restitution, the appointment of a receiver, claims under California, Oregon, Alaska, Illinois, and any other state or federal law (Cal. Civ. Code §§ 56, et seq., 1798.150 et seq.; Alaska Stat. §§ 18.13.010, et seq.; 410 ILCS 513, et seq.; Or. Rev. Stat. §§ 192.531, et seq) for statutory damages arising from a data breach or the disclosure of personal, confidential medical, or genetic information, and any other form of relief that either has been asserted, or could have been asserted, by any Settlement Class Member against any of the Released Persons based on, relating to, or arising out of the same factual predicate as the allegations in the Litigation. The definition of "Released Claims" shall be construed as broadly as possible under Ninth Circuit law to effect complete finality over this Litigation. Released Claims shall not include the right of any Settlement Class Member or any of the Released Persons to enforce the terms of the settlement contained in this Settlement Agreement and shall not include the claims of Settlement Class Members who have timely opted out of the Settlement Class.

38. "Related Entities" means 23andMe's past or present parents, subsidiaries, affiliates, divisions, and related or affiliated entities of any nature whatsoever, whether direct or indirect, as well as each of 23andMe's and these entities' respective predecessors, successors, directors, managers, officers, employees, principals, agents, attorneys, insurers, and reinsurers and includes, without limitation, any Person related to any such entity who is or was named as a defendant in any of the actions in the Litigation.

39. "Released Persons" means 23andMe and its Related Entities, including, as stated in ¶ 38, and each of their past or present parents, subsidiaries, divisions, and related or affiliated entities of any nature whatsoever, and each of their respective

predecessors, successors, directors, managers, officers, employees, principals, agents, attorneys, insurers, and reinsurers.

40. “Releasing Parties” means the Settlement Class Representatives and all Settlement Class Members who do not timely and validly opt out of the Settlement.

41. “Service Awards” means any payments made, subject to Court approval, to Settlement Class Representatives, as set forth in ¶ 98.

42. “Settlement” means the settlement of the Litigation by and between the Parties, as set forth pursuant to the terms and conditions in this Agreement, including all attached Exhibits.

43. “Settlement Benefits Plan” means the method of distribution of Settlement benefits, as submitted by Class Counsel in conjunction with their motion for a Preliminary Approval Order. The Settlement Benefits Plan may be modified prior to the entry of a Preliminary Approval Order, but in no event may require payments in excess of the Settlement Fund.

44. “Settlement Class” means: all natural persons who were residents of the United States on August 11, 2023 and whose Personal Information was compromised in the Security Incident. The Settlement Class specifically excludes: (i) 23andMe and its officers and directors; (ii) all Settlement Class Members who timely and validly request to opt out from the Settlement Class under the opt out procedures provided in ¶¶ 80-85; (iii) the Judge assigned to evaluate the fairness of this settlement; and (iv) potential class members who have provided 23andMe with an express release of claims arising out of or related to the Security Incident prior to the Effective Date of this Settlement. The definition of the Settlement Class is for settlement purposes only.

45. “Settlement Classes” mean the Settlement Class and the California, Illinois, Oregon and Alaska Statutory Subclasses as defined in ¶ 51.

46. “Settlement Class Member” means any person within the definition of the Settlement Class defined in ¶ 44.

47. “Settlement Class Representatives” means the individuals identified in Exhibit 2.

48. “Settlement Fund” means the non-reversionary cash settlement common fund for the benefit of the Settlement Class in the amount of thirty million United States Dollars (\$30,000,000) that 23andMe shall pay pursuant to this Agreement.

49. “Settlement Website” means the Internet website used by the Notice and Claims Administrator to facilitate notice and administration of this Settlement.

50. “Settling Parties” means, collectively, 23andMe and the Settlement Class Representatives, individually and on behalf of the Settlement Class

51. “Statutory Subclass Members” means Settlement Class Members who were residents of Alaska, Oregon, California or Illinois as of August 11, 2023.

52. “Taxes and Tax-Related Expenses” means: (i) any and all applicable taxes, duties and similar charges imposed by a government authority (including any estimated taxes, interest or penalties) arising in any jurisdiction, if any, with respect to the income or gains earned by or in respect of the Qualified Settlement Fund, including, without limitation, any taxes that may be imposed upon 23andMe or their counsel with respect to any income or gains earned by or in respect of the Settlement Fund for any period while it is held in the Qualified Settlement Fund account; (ii) any other taxes, duties and similar charges imposed by a government authority (including any estimated taxes, interest or penalties) relating to the Qualified Settlement Fund that the Notice and Claims Administrator determines are or will become due and owing, if any; and (iii) any and all expenses, liabilities and costs incurred in connection with the taxation of the Qualified Settlement Fund (including without limitation, expenses of tax attorneys and accountants).

53. “Unknown Claims” means any of the Released Claims that any Settlement Class Member, including any of the Settlement Class Representatives, does not know or suspect to exist in his/her favor at the time of the release of the Released Persons that, if known by him or her, might have affected his or her settlement with, and release of, the Released Persons, or might have affected his or her decision not to object to and/or to participate in this Settlement Agreement. With respect to any and all Released Claims, including Unknown Claims, the Settling Parties stipulate and agree that upon the Effective Date, the Settlement Class Representatives expressly shall have, and each of the other Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have, waived the provisions, rights, and benefits conferred by California Civil Code § 1542, and also any and all provisions, rights, and benefits conferred by any law of any state, province, or territory of the United States which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

54. Settlement Class Members may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Released Claims, including Unknown Claims, but the Settlement Class Representatives expressly shall have, and each other Settlement Class Member shall be deemed to have, and by operation of the Judgment shall have, upon the Effective Date, fully, finally and forever settled and released any and all Released Claims,



including Unknown Claims. The Settling Parties acknowledge, and Settlement Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver is a material element of the Settlement Agreement of which this release is a part.

## **II. THE QUALIFIED SETTLEMENT FUND**

55. The Notice and Claims Administrator will establish an interest-bearing escrow account to serve as the Qualified Settlement Fund, at a bank or another financial institution approved by Class Counsel, which shall be maintained pursuant to Treasury Regulation § 1.468B-1, et seq.

56. By no later than ten (10) days of an order granting Preliminary Approval, 23andMe will deposit the Notice Payment into the Qualified Settlement Fund for purposes of facilitating the Notice Plan. The Notice Payment shall be credited against the total Settlement Fund required to be paid into the Qualified Settlement Fund.

57. No amounts may be withdrawn from the Qualified Settlement Fund prior to the Effective Date unless: (i) expressly authorized by this Agreement; or (ii) approved by the Court, except that the Notice Payment may be used to provide notice to Settlement Class Members under the Notice Plan as approved by the Court. The Notice and Claims Administrator shall be judicious and prudent in incurring notice and administrative expenses.

58. Not later than ten (10) days following the issuance of a Final Approval Order, the Defendant shall deposit the remainder of the Settlement Fund into the Qualified Settlement Fund for a total deposit of \$30,000,000.

59. As further described in this Agreement, the Qualified Settlement Fund shall be the sole source of monetary funds for all relief in the Settlement—excluding any amounts needed to affect the Business Practice Commitments described in Section IV, which sums and value will be in addition to the monetary relief being provided from

the Qualified Settlement Fund—and shall be used by the Notice and Claims Administrator to pay for:

- a) Taxes and Tax-Related Expenses as described in ¶ 63;
- b) Payments required under the Settlement Benefits Plan;
- c) Preparing and sending CAFA Notice;
- d) Notice and Claims Administration Costs;
- e) Service Awards, as described in ¶ 98;
- f) Class Counsel’s Attorneys’ Fees, Costs, and Expenses; and
- g) Any other remuneration called for by this Agreement, other than 23andMe’s expenses and attorneys’ fees related to this Litigation and the Business Practice Commitments described in Section IV.

60. The Notice and Claims Administrator, subject to such supervision and direction of the Court and Class Counsel as may be necessary or as circumstances may require, shall administer and oversee distribution of the Qualified Settlement Fund to Settlement Class Members pursuant to this Agreement.

61. The Notice and Claims Administrator and Class Counsel are responsible for communicating with Settlement Class Members regarding the distribution of the Qualified Settlement Fund and amounts paid under the Settlement.

62. All funds held in the Qualified Settlement Fund shall be deemed to be in the custody of the Court upon the deposit of those funds until such time as the funds shall be distributed to Settlement Class Members or used as otherwise disbursed pursuant to this Agreement or further order of the Court.

63. The Settling Parties agree that the Qualified Settlement Fund is intended to be maintained within the meaning of Treasury Regulation § 1.468B-1, and that the Notice and Claims Administrator, within the meaning of Treasury Regulation § 1.468B-

2(k)(3), shall be responsible for filing tax returns and any other tax reporting for or in respect of the Qualified Settlement Fund and paying from the Qualified Settlement Fund any Taxes and Tax-Related Expenses owed with respect to the Settlement Fund. The Settling Parties agree that the Qualified Settlement Fund shall be treated as an escrow account from the earliest date possible and agree to any relation-back election required to treat the Qualified Settlement Fund as an escrow account from the earliest date possible.

64. All Taxes and Tax-Related Expenses shall be paid out of the Qualified Settlement Fund and shall be timely paid by the Notice and Claims Administrator without prior order of the Court.

65. The Settling Parties and their respective counsel have made no representation or warranty with respect to the tax treatment by any Settlement Class Representative or any Settlement Class Member of any payment or transfer made pursuant to this Agreement or derived from or made pursuant to the Qualified Settlement Fund.

66. Each Settlement Class Representative and Settlement Class Member shall be solely responsible for the federal, state, and local tax consequences to him, her, or it of the receipt of funds from the Qualified Settlement Fund pursuant to this Agreement.

67. 23andMe and its counsel shall not have any responsibility for or liability whatsoever with respect to: (i) any act, omission, or determination of Class Counsel, the Notice and Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment, or distribution of the Qualified Settlement Fund; (iii) the formulation, design, or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation, or payment of any claims asserted against the Qualified Settlement Fund; (v) any losses suffered by, or fluctuations in the value of the Qualified Settlement Fund; or (vi) the payment or withholding of any Taxes and Tax-Related

Expenses incurred in connection with the taxation of the Qualified Settlement Fund or the filing of any returns. 23andMe also shall have no obligation to communicate with Settlement Class Members and others regarding amounts paid under the Settlement.

68. The Settlement Class Representatives and Class Counsel shall not have any liability whatsoever with respect to any acts taken pursuant to the terms of this Agreement, including, but not limited to: (i) any act, omission or determination of the Notice Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment, or distribution of the Settlement Fund; (iii) the formulation, design, or terms of the disbursement of the Qualified Settlement Fund; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of the Qualified Settlement Fund; or (vi) the payment or withholding of any Taxes and Tax-Related Expenses incurred in connection with the taxation of the Settlement Fund or the filing of any returns.

### **III. SETTLEMENT BENEFITS**

69. All Settlement Class Members who do not timely opt out of the Settlement in accordance with the requirements of ¶¶ 80-85 will be entitled to benefits set forth in the Settlement Benefits Plan in addition to the Business Practice Commitments set forth in Section IV, to be exclusively paid for from the Qualified Settlement Fund.

### **IV. BUSINESS PRACTICE COMMITMENTS**

70. 23andMe, at its sole and separate expense, shall certify that it has adopted, paid for, and implemented and intends to maintain the following Business Practice Commitments related to information security to safeguard current users' and Settlement

Class Members' Personal Information. The cost of the measures in this Section will not be paid from the Qualified Settlement Fund.

**a) Enhanced Password Protection.** Automatic check of customer passwords against breach lists of known passwords, rejecting the use of passwords that are subject to past known breaches and requiring customers to use a password that is not included on breach lists of known passwords. 23andMe will also automatically check customer passwords against the five most recently used passwords by the same customer and require a customer to use a password that is not one of the five passwords the customer most recently used for his/her/their account on 23andMe.

**b) Mandated Multi-Factor Authentication.** Mandate 2-factor or 2-step verification for all customers.

**c) Annual Security Awareness Training.** 23andMe will provide annual security awareness training for its employees.

**d) Annual Computer Scans and Cybersecurity Audits.** At a minimum, 23andMe will conduct annual computer scans and cybersecurity audits to ensure compliance with ISO standards 27001, 27018 and 27701, the first of which will be completed within one year following the entry of a Final Judgment, and the second of such audits within one year thereafter, and so on for a total of three years. 23andMe will provide a certification to Class Counsel following completion of each of the audits.

**e) Information Security Program.** 23andMe will maintain a reasonable written Information Security Program that is updated from time to time and distributed to all employees as part of the Annual

Security Awareness Training in ¶ 70(c). This Information Security Program will address, among other things, implementing and maintaining reasonable safeguards to protect the security of company, employee and customer information and address data privacy risks and/or threats posed to that information. 23andMe will also identify internal and external risks to the security of its customers' personally identifiable information that could result in unauthorized access to the company's system, and periodically review the sufficiency of any safeguards in place to control these risks. 23andMe will develop security metrics that measure its security program and will ensure that such metrics are periodically reviewed and approved by senior leadership. All 23andMe employees, including new hires, must review, and agree to maintain and uphold, the policies, practices and procedures that encompass the Information Security Program.

**f) Maintenance of Data Breach Incidence Response Plan and Threat Management.** 23andMe will maintain, regularly review, and revise as necessary, a process to conduct risk-based monitoring of security events on 23andMe's network and require that tools used to perform network monitoring be appropriately monitored and tested to assess proper configuration and maintenance. The process shall include an assessment of the security events and appropriate remediation timelines based on severity.

**g) Retention of Personal Information.** 23andMe will implement a policy regarding retention of Personal Information of customers who are inactive or have deactivated their accounts that is designed to avoid

maintaining Personal Information beyond an appropriate retention period.

71. The Class Notice will direct Settlement Class Members to a link where a Settlement Class Member can delete all their information from 23andMe, and whereby 23andMe shall permanently delete such information in accordance with all applicable laws.

72. At least 14 days in advance of the Final Approval Hearing, 23andMe shall file a report with the Court, with a copy to Class Counsel, detailing the status of its compliance with the Business Practice Commitments set forth in this section. The report shall be certified by the most senior 23andMe employee with responsibility for overseeing the Business Practice Commitments set forth herein.

## **V. PRESENTATION OF THE SETTLEMENT TO THE COURT**

73. As soon as practicable after the execution of the Settlement Agreement, Class Counsel shall file Plaintiffs' Motion for Preliminary Approval of the Settlement with the Court, requesting entry of a Preliminary Approval Order in the form attached hereto as Exhibit 1 or an order substantially similar to such form, requesting, among other things:

- a) certification of the Settlement Class for settlement purposes only;
- b) preliminary approval of the Settlement Agreement as set forth herein;
- c) appointment of Class Counsel for the Settlement Class;
- d) appointment of the Settlement Class Representatives;
- e) approval of a customary form of short notice to be emailed or mailed to Settlement Class Members (the "Short Notice"), a customary long form of notice to be available on the Settlement Website ("Long Notice"), and notice provided through 23andMe's website and mobile

application, which shall include a fair summary or a link to the Settling Parties' respective litigation positions, the general terms of the settlement set forth in the Settlement Agreement, instructions for how to object to or opt out of the settlement, the process and instructions for making claims to the extent contemplated herein and the date, time and place of the Final Approval Hearing;

- f) approval of the Settlement Benefits Plan; and
- g) appointment of the Notice and Claims Administrator;
- h) preliminary injunction of all Settlement Class Members and their representatives from filing, commencing, prosecuting, maintaining, intervening in, conducting, continuing, or participating in any other lawsuit or administrative, regulatory, arbitration or other proceeding based on the Released Claims, unless and until they personally submit a timely request for individual exclusion pursuant to the Settlement Agreement after receiving Notice.

## **VI. NOTICE PROGRAM**

74. Except for costs incurred by 23andMe fulfilling its obligations as set forth in this section, the cost of notice to the Settlement Class in accordance with the Preliminary Approval Order, together with the Notice and Claims Administration Costs, shall be paid from the Qualified Settlement Fund.

75. Notice shall be provided to Settlement Class Members (i) via email using the same email list 23andMe used to notify its affected customers of the Security Incident, which 23andMe will update to include any additional Settlement Class Members or revised contact information as available and necessary, and provide to the Notice and Claims Administrator within 20 days of an order granting Preliminary Approval; (ii) to the extent email notice is undeliverable or an email address is



unavailable, via direct mail notice to the mailing address 23andMe will provide to the Notice and Claims Administrator as set forth in this paragraph; (iii) by notice provided through 23andMe's website and mobile application to the Settlement Class members upon logging into their accounts on the website or mobile application; and (iv) a media plan, consisting of an agreed-upon press release and search ads to drive traffic to the Settlement Website, to be implemented by the Notice and Claims Administrator.

76. The Notice and Claims Administrator, at the direction of 23andMe, will serve or cause to be served the notice required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, not later than ten (10) days after this Agreement is filed with the Court, and confirm compliance with this provision in writing to Class Counsel, the cost of which will be paid from the Qualified Settlement Fund.

77. The Notice Plan shall be subject to approval by the Court as meeting constitutional due process requirements.

78. The Notice and Claims Administrator shall establish a dedicated Settlement Website and shall maintain and update the website throughout the claim period, with the forms of Short Notice, Long Notice, and Claim Form approved by the Court, as well as this Settlement Agreement, and other important case documents, including Plaintiffs' Consolidated Complaint, Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, Order Granting Preliminary Approval, and when filed, Plaintiffs' Motion for Attorneys' Fees, Litigation Expenses and Service Awards, Plaintiffs Motion for Final Approval of Class Action Settlement and any Orders thereon. Settlement Class Counsel shall propose the format and content of the Settlement Website for prior approval by 23andMe's Counsel, which shall not be unreasonably withheld. The Settling Parties shall mutually select the URL for the Settlement Website. A toll-free help line shall be made available providing recorded responses to FAQs with the option to leave a voice mail message. The Notice and Claims Administrator shall address Settlement Class Members' inquiries within a

reasonable time. The cost of such help line shall be paid from the Qualified Settlement Fund. The Notice and Claims Administrator also will provide copies of the forms of Short Notice, Long Notice, and Claim Form approved by the Court, as well as this Settlement Agreement, upon request.

79. Prior to the Final Approval Hearing, Class Counsel and 23andMe shall cause to be filed with the Court appropriate affidavits or declarations with respect to complying with the provisions of the Notice Plan. 23andMe will provide an affidavit or declaration to be filed with Plaintiffs' Motion for Final Approval, confirming compliance with its obligations to post the Notice through its application and on its website. The Short Notice, Long Notice, and Claim Form approved by the Court may be adjusted by the Notice and Claims Administrator, respectively, in consultation and agreement with the Settling Parties, as may be reasonable and necessary and not inconsistent with such approval. The Notice Program shall be completed within 60 days of the Preliminary Approval Order.

## **VII. OPT-OUT PROCEDURES**

80. Each Person wishing to exclude themselves from the Settlement must submit a written request for exclusion to the Notice and Claims Administrator, which shall be postmarked no later than the Opt-Out Deadline or submitted online through the claims portal and verified no later than the Opt-Out Deadline.

81. The written Opt-Out request must:

- (i.) Include the case name of the Litigation: *In Re: 23andMe, Inc., Customer Data Security Breach Litigation*, Case No. 24-md-03098-EMC;
- (ii.) Identify the name and current email and mailing addresses of the Person seeking exclusion from the Settlement;
- (iii.) Identify the 23andMe username or email associated with the 23andMe account for the Person seeking exclusion from the Settlement;

- (iv.) Be individually signed by the Person seeking exclusion using wet-ink signature, DocuSign, or other similar process for transmitting authenticated digital signatures;
- (v.) Include an attestation clearly indicating the Person's intent (to be determined by the Notice and Claims Administrator) to be excluded from the Settlement;
- (vi.) Attest that the Person seeking exclusion had a 23andMe user account as of August 11, 2023.

82. To be effective and valid, Opt-Out requests submitted online through the claims portal must be submitted by the Opt-Out Deadline and must verify the Opt-Out request no later than three (3) business days following the Opt-Out Deadline using the link sent to the email address of the Settlement Class Member.

83. Opt-Out requests seeking exclusion on behalf of more than one individual shall be deemed invalid by the Notice and Claims Administrator.

84. All Persons who submit valid and timely notices of their intent to be excluded from the Settlement Class, as set forth in ¶¶ 80-85 above, referred to herein as "Opt-Outs," shall not: (i) be bound by the terms of this Settlement Agreement, any orders or judgement entered in connection with the Settlement; (ii) be entitled to any relief under, or be affected by, the Settlement Agreement; (iii) gain any rights by virtue of the Settlement Agreement; or (iv) be entitled to object to any aspect of the Settlement.

85. All Persons falling within the definition of the Settlement Class who do not substantially comply with the requirements of this Settlement Agreement governing Opt-Out requests in the manner set forth in ¶¶ 80-85 above shall be bound by the terms of this Settlement Agreement and Judgment entered thereon.

86. Commencing one week from the Notice Date, the Notice and Claims Administrator will notify 23andMe's Counsel and Class Counsel regarding the number

of potential settlement class members that have elected to Opt-Out of the settlement class and will continue to provide weekly updates. No later than 10 days after the Opt-Out Deadline, the Notice and Claims Administrator shall provide a final report to Class Counsel and 23andMe's Counsel that summarizes the number of written notifications of Opt-Outs received to date, and other pertinent information as requested by Class Counsel and 23andMe's Counsel.

87. At the request of Class Counsel or 23andMe's Counsel, the Notice and Claims Administrator shall conduct an additional audit of Opt-Out requests to confirm compliance with the procedures set forth in ¶¶ 80-85.

88. 23andMe may, in its sole discretion, terminate this Settlement Agreement if more than a specified number of individuals submit valid and timely requests to exclude themselves from the Settlement, as agreed to by the Parties and submitted to the Court for in-camera review. If 23andMe elects to terminate this Agreement, it shall provide written notice within fifteen (15) calendar days after the Opt-Out Deadline. If 23andMe rescinds the Settlement pursuant to this section of the Settlement Agreement, it shall have no further obligations to pay the Settlement Fund and shall be responsible for only the fees and expenses actually incurred by the Notice and Claims Administrator, for which the Settlement Class Representatives and Class Counsel are not liable.

## **VIII. OBJECTION PROCEDURES**

89. Any Settlement Class Member desiring to object to the Settlement must submit a written objection to the Court on or before the Objection Deadline, as specified in the Preliminary Approval Order.

90. The written objection must include:

- (i.) The case name and number of the Litigation;

- (ii.) The full name, address, telephone number, and email address of the objecting Settlement Class Member;
- (iii.) Information which verifies the objector is a Settlement Class Member, (e.g., a copy of the Class Notice or of the original notice of the security incident addressed to the objecting Settlement Class Member);
- (iv.) A written statement of all grounds for the objection, accompanied by any legal support for the objection;
- (v.) A statement of whether the objection applies only to the objector, to a specific subset of the class, or to the entire class;
- (vi.) A statement confirming whether the objector intends to personally appear or testify at the Final Approval Hearing;
- (vii.) The identity of all counsel representing the objector and whether they will appear at the Final Approval Hearing;
- (viii.) A statement of whether the objector has sold or otherwise transferred the right of their recovery to this Litigation to another person or entity, and, if so, the identity of the person or entity; and
- (ix.) The objector's signature or other duly authorized representative.

91. To be timely, written notice of an objection in the appropriate form must be filed with the Clerk of the Court or postmarked to the Class Action Clerk for the Northern District of California no later than the Objection Deadline.

92. Any Settlement Class Member who fails to comply with the requirements for objecting in ¶¶ 89-91 shall be deemed to have waived any such objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders and judgments in the litigation. the exclusive means for any challenge to the settlement shall be through the provisions of ¶¶ 89-91.

93. Submitting an objection notice under this section shall constitute the objecting settlement class member's consent to jurisdiction of the Court and to accept service of process, including subpoenas for testimony, at the email or street address provided in the objection notice.

#### **IX. MUTUAL RELEASE**

94. Upon the Effective Date, each Settlement Class Member, including Settlement Class Representatives, shall be deemed to have, and by operation of the judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against all Released Persons. Further, upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member, including Settlement Class Representatives, shall, either directly, indirectly, representatively, as a member of or on behalf of the general public or in any capacity, be permanently barred and enjoined from commencing, prosecuting, or participating in any action or recovery in any action in this or any other forum (other than participation in the settlement as provided herein) in which any of the Released Claims is asserted.

95. Defendant will release and discharge Settlement Class Members, Settlement Class Representatives, and Settlement Class Counsel from any claims that arise out of or relate in any way to the institution, prosecution, or Settlement of this Litigation against Defendant, except for claims relating to the enforcement of the Settlement.

#### **X. ATTORNEYS' FEES, COSTS AND EXPENSES AND SERVICE AWARDS**

96. The Settling Parties did not negotiate the payment of attorneys' fees, costs, expenses and/or service awards to Settlement Class Representatives, as provided for in ¶¶ 97-98, until after the substantive material terms of the Settlement had been agreed

upon, other than that Class Counsel's reasonable attorneys' fees, costs, and expenses, and service awards to representative plaintiffs, would be paid from the Qualified Settlement Fund as ordered by the Court.

97. Class Counsel will request the court to approve up to 25% from the Qualified Settlement Fund for their attorneys' fees, plus reimbursement of reasonable costs and expenses of the Litigation. Class Counsel, in their sole discretion, shall allocate and distribute the amount of attorneys' fees, costs, and expenses awarded by the Court. The amount of attorneys' fees and expenses to be awarded shall be a matter of complete discretion of the Court upon consideration of the complete factual record before the Court at the Final Approval Hearing.

98. Settlement Class Representatives will move the Court for Service Awards of up to \$1,000 per Settlement Class Representative from the Qualified Settlement Fund. Defendants agree not to oppose the request for Service Awards to the extent it does not exceed this amount. The amount of Service Awards to be awarded shall be a matter of complete discretion of the Court upon consideration of the complete factual record before the Court at the Final Approval Hearing.

99. The amount(s) of any award of attorneys' fees, costs, and expenses, and the Service Awards to Settlement Class Representatives, are intended to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement. No order of the Court, or modification or reversal or appeal of any order of the Court, concerning the amount(s) of any attorneys' fees, costs, expenses, or Service Awards ordered by the Court to Class Counsel or Settlement Class Representatives, shall affect whether the Judgment is final or constitute grounds for cancellation or termination of this Settlement Agreement.

## **XI. DUTIES OF NOTICE AND CLAIMS ADMINISTRATOR**

100. The Notice and Claims Administrator shall perform the functions specified in this agreement and its exhibits, including, but not limited to:

- a) Obtaining from 23andMe, pursuant to ¶ 75, the names and last known email addresses and mailing addresses, to the extent reasonably available, of Settlement Class Members for the purpose of sending Notice to Settlement Class Members;
- b) Obtaining from 23andMe, pursuant to ¶ 75, information, to the extent reasonably necessary, to establish a reasonably practical procedure to verify Settlement Class Members;
- c) Acting at 23andMe's direction, serving a letter and accompanying materials on the Attorney General of the United States and each state Attorney General or others, all as required by the Class Action Fairness Act, 28 U.S.C. § 1715(b);
- d) Effecting the Notice Plan as approved by the Court;
- e) Effecting implementation of the Settlement Benefits Plan;
- f) Establishing and maintaining a Post Office Box or other mailing address for mailed written notifications of Opt-Outs, mailed Claim Forms, and communications from the Settlement Class;
- g) Establishing and maintaining the Settlement Website that, among other things, allows Settlement Class Members to file claims electronically, contains important case documents, FAQs, the Long Notice, important deadlines and the time and place of the Final Approval Hearing;



- h) Establishing and maintaining a toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries which will provide recorded FAQs. The toll-free telephone line will also provide the option for Settlement Class Members to leave a recorded message and receive a return call or other response when requested; within a reasonable time.
- i) Responding to any mailed or emailed Settlement Class Member inquiries;
- j) Mailing paper copies of the Notice and Claim Forms to Settlement Class Members who request them;
- i) Verifying that each Person who submits a Claim Form is a Settlement Class Member. Ambiguities or deficiencies on the face of the Claim Form shall be resolved by the Notice and Claims Administrator.
- j) Processing all written notifications of Opt-Outs from Settlement Class Members;
- k) Providing reports on Opt-Out requests received pursuant to ¶¶ 80-87;
- l) In advance of the Final Approval Hearing, preparing affidavits or declarations to submit to the Court that: (i) attest to implementation of the Notice Plan in accordance with the Preliminary Approval Order; and (ii) identify each Settlement Class Member who timely and properly provided written notification of Opt-Out;
- m) Providing weekly reports and a final report to Class Counsel and 23andMe's Counsel that summarize the number and amount of claims and Opt-Outs since the prior reporting period, the total number and amount of claims and Opt-Outs received to date, and as available, the number and amount of any claims approved and denied since the prior

reporting period, the total number and amount of claims approved and denied to date, and other pertinent information as requested by Class Counsel and 23andMe's Counsel;

- n) Paying all Taxes and Tax-Related Expenses from the Qualified Settlement Fund;
- o) Performing any function related to administration of the Settlement at the agreed upon instruction of both Class Counsel and 23andMe's Counsel in a prudent manner, including, but not limited to, verifying that cash payments have been distributed;
- p) Determining the validity of, and processing all claims submitted by Settlement Class Members;
- q) Overseeing administration of the Qualified Settlement Fund; and
- r) Complying with all requirements imposed by the Court.

101. The Notice and Claims Administrator shall indemnify and hold harmless the Parties, Class Counsel and 23andMe's Counsel for (i) any act or omission or determination of the Administrator, or any of the Administrator's designees or agents, in connection with the Notice Plan and the administration of the Settlement; (ii) the management, investment, or distribution of the Settlement Fund; (iii) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (iv) any losses suffered by, or fluctuations in the value of the Settlement Fund; or (v) the payment or withholding of any Taxes.

## **XII. CONDITIONS OF SETTLEMENT, CANCELLATION OR TERMINATION**

102. In the event any of the following events, this Settlement Agreement shall be canceled and terminated subject to ¶¶ 103-107 unless Class Counsel and 23andMe's

Counsel mutually agree in writing to proceed with the Settlement Agreement: (a) the Court declines to enter an Order of Preliminary Approval as required by ¶ 73; (b) a Party has exercised any option to terminate the Settlement Agreement provided by this Agreement; or (c) the Court declines to grant the Final Approval Order and Judgment to the Settlement as set forth herein.

103. In the event that (i) the Settlement Agreement is not approved by the Court and the Parties are unable in good faith to revise the terms of the Settlement Agreement to address the Court's concerns and seek approval of a revised agreement, or (ii) the Settlement set forth in the Settlement Agreement is terminated in accordance with its terms, including ¶¶ 103-106, then (a) the Settling Parties shall be restored to their respective positions in the Litigation as if the Agreement had never been entered into, any remaining funds in the Qualified Settlement Fund shall be returned to 23andMe within seven business days, and the Settling Parties shall jointly request that all scheduled litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any of the Parties or their counsel; (b) the terms and provisions of the Settlement Agreement and statements made in connection with seeking approval of the Agreement shall have no further force and effect with respect to the Settling Parties and shall not be used in the Litigation or in any other proceeding for any purpose, and (c) any Judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, nunc pro tunc.

104. Notwithstanding any statement in this Settlement Agreement to the contrary, no order of the Court or modification or reversal on appeal of any order reducing the amount of attorneys' fees, costs, expenses, or Service Awards shall constitute grounds for cancellation or termination of the Settlement Agreement.

105. Notwithstanding any statement in this Settlement Agreement to the contrary, the provision relating to the preliminary injunction in Paragraph 73(h) shall be severable from the rest of the Settlement Agreement and no order of the Court or

modification or reversal on appeal of any order related to any preliminary injunction shall constitute grounds for cancellation or termination of the Settlement Agreement.

106. The Settling Parties agree, for purposes of this Settlement only, to the certification of the Settlement Class. If the Settlement set forth in this Settlement Agreement is not approved by the Court, or if the Settlement Agreement is terminated or cancelled pursuant to the terms of this Settlement Agreement, this Settlement Agreement, and the certification of the Settlement Class provided for herein, will be vacated and the Litigation shall proceed as though the Settlement Class had never been certified, without prejudice to any Person's or Settling Party's position on the issue of class certification or any other issue.

107. The Settling Parties' agreement to the certification of the Settlement Class is also without prejudice to any position asserted by the Settling Parties in any other proceeding, case or action, as to which all of their rights are specifically preserved. The Settling Parties agree that this Agreement, or the existence of a Settlement Class, may not be cited in support of any subsequent motion for class certification.

### **XIII. MISCELLANEOUS PROVISIONS**

108. The Settling Parties intend this Settlement to be a final and complete resolution of all disputes between them with respect to the Litigation and the Released Claims. The Settlement compromises claims that are contested and shall not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Settling Parties each agree that the Settlement was negotiated in good faith by the Settling Parties and reflects a settlement that was reached voluntarily after consultation with competent legal counsel. The Settling Parties reserve their right to rebut, in a manner that such Party determines to be appropriate, any contention made in any public forum that the Litigation was brought or defended in bad faith or without a reasonable basis.

109. Any of the Released Persons may file the Settlement Agreement or the Judgment in any action that may be brought against them or any of them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

110. Neither the Settlement Agreement, nor the Settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the Settlement (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity or lack thereof of any Released Claim, or of any wrongdoing or liability of any of the Released Persons; (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Released Persons in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal; or (iii) may be cited or relied upon to support any private cause of action or claim in any court, administrative agency or other tribunal.

111. The Settlement Agreement may be modified only by a written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest, and only before the Court preliminarily approves it.

112. The Settlement Agreement, together with the Exhibits attached hereto, constitute the entire agreement among the Settling Parties, and no representations, warranties or inducements have been made to any party concerning the Settlement Agreement other than the representations, warranties and covenants contained and memorialized in such document. Except as otherwise provided herein, each Party shall bear its own costs. This agreement supersedes all previous agreements made by the Settling Parties.

113. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement, subject to Court approval.

114. The Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of original executed counterparts shall be filed with the Court.

115. The Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties.

116. The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Settlement Agreement, and all Settling Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in the Settlement Agreement.

117. The Settlement Agreement shall be considered to have been negotiated, executed, and delivered, and to be wholly performed, in the State of California, and the rights and obligations of the Settling Parties shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of California without giving effect to choice of law principles.

118. The Exhibits to this Agreement are a material part of the Settlement and are incorporated and made a part of the Agreement.

119. All dollar amounts are in United States dollars (USD).


120. All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Settlement Agreement.

121. No government agency or official can claim any rights under this Agreement or Settlement.

IN WITNESS WHEREOF, the parties hereto have caused the Settlement Agreement to be executed, by their duly authorized attorneys.

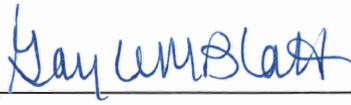
**COUNSEL FOR DEFENDANT  
23ANDME, INC.**

Date: September 5, 2024


By:   
Ian C. Ballon  
Rebekah S. Guyon  
**Greenberg Traurig, LLP**

**COUNSEL FOR THE  
SETTLEMENT CLASS  
REPRESENTATIVES AND THE  
SETTLEMENT CLASSES**

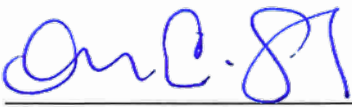
Date: September 5, 2024

By:   
Gayle M. Blatt  
Casey Gerry Schenk Francavilla  
**Blatt & Penfield, LLP**

Date: Sept. 5, 2024

By:   
Cari C. Laufenberg  
**Keller Rohrback L.L.P.**

Date: September 5, 2024

By:   
Norman E. Siegel  
**Stueve Siegel Hanson LLP**

# EXHIBIT 1



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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

IN RE: 23ANDME, INC. CUSTOMER DATA  
SECURITY BREACH LITIGATION

This Document Relates to: ALL ACTIONS

No. 3:24-md-03098-EMC

**[PROPOSED] ORDER GRANTING  
PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

Judge: Hon. Edward M. Chen  
Courtroom: 5, 17<sup>th</sup> Floor  
Hearing Date: October 17, 2024  
Hearing Time: 1:30 p.m.

1 Before the Court is Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action  
2 Settlement which seeks approval of the proposed class action settlement, the plan of allocation, the  
3 form and manner of notice, certification of the proposed Class for settlement and scheduling of a final  
4 approval hearing (“Motion”) at which the Court will consider final approval of the Settlement, and  
5 Class Counsels’ motion for attorneys’ fees, costs and service awards in this action.

6 WHEREAS, Court-appointed Co-Lead Counsel on behalf of Plaintiffs and a defined proposed  
7 Settlement Class, and Defendant 23andMe, Inc. (“23andMe” or “Defendant”) have entered into a  
8 Settlement Agreement and Release, dated September 5, 2024 (“Settlement Agreement”), that, subject  
9 to the Court’s approval and final hearing on the matter, will resolve this lawsuit;

10 WHEREAS, the Court, for purposes of this Order, unless otherwise defined herein, adopts all  
11 terms capitalized herein as defined in the Settlement Agreement;

12 WHEREAS, this matter has come before the Court pursuant to Plaintiffs’ Unopposed Motion  
13 for Preliminary Approval of the Class Action Settlement, and all corresponding and supporting  
14 documents attached thereto (the “Motion”), the record in this matter, and the briefs and arguments of  
15 counsel;

16 WHEREAS, the Court finds that it has jurisdiction over the Litigation and each of the Parties;

17 WHEREAS, the Court held a Preliminary Approval Hearing on October 17, 2024,

18 **IT IS HEREBY ORDERED AS FOLLOWS:**

19 1. The Court retains continuing and exclusive jurisdiction over this Litigation, including  
20 the Settlement Class Representatives, Defendant, Settlement Class Members, and all matters arising  
21 out of or connected with the settlement, including the administration and enforcement of the Settlement  
22 Agreement.

23 **Preliminary Approval**

24 2. The Court has carefully reviewed all of the terms of the proposed Settlement Agreement,  
25 all corresponding and supporting documents attached thereto, Plaintiffs’ Motion and corresponding  
26 papers filed therewith, including the Declaration of counsel and the Notice and Claims Administrator.  
27 Based on its review of these documents, and having heard the Parties, the Court finds that the terms of

1 the Settlement Agreement fall within the range of possible approval, and it is likely it will be able to  
2 approve the proposed Settlement as fair, reasonable, and adequate, and the result of vigilant, informed,  
3 non-collusive arms-length negotiations.

4 3. The Court hereby GRANTS preliminary approval of the Settlement, and all of the terms  
5 and conditions contained therein.

6 **Preliminary Certification of Settlement Class**

7 4. The Court preliminarily certifies, for settlement purposes only pursuant to Federal Rule  
8 of Civil Procedure 23(b)(3), the Settlement Class and subclass defined in the Settlement Agreement as  
9 follows:

10 **Settlement Class:**

11 All natural persons who were residents of the United States on August 11, 2023 and whose  
12 Personal Information was compromised in the Security Incident.

13 **Statutory Subclass:**

14 Settlement Class Members who were residents of Alaska, Oregon, California or Illinois on  
15 August 11, 2023.

16 5. Excluded from the Settlement Class are (i) 23andMe and its officers and directors; (ii)  
17 all Settlement Class Members who timely and validly request to opt-out from the Settlement Class  
18 under the opt-out procedures provided in ¶¶ 79-87; (iii) the Judge assigned to evaluate the fairness of  
19 this settlement; and (iv) potential class members who have provided 23andMe with an express release  
20 of claims arising out of or relating to the Security Incident prior to the Effective Date of this Settlement.

21 6. The Court preliminarily finds that the Settlement Class and Statutory Subclass each  
22 satisfy the requirements of Federal Rule of Civil Procedure 23(a) for settlement purposes: (1) the  
23 Settlement Class and Statutory Subclass are each sufficiently numerous that joinder of all members is  
24 impracticable, (2) there are questions of law or fact common to the Settlement Class and Statutory  
25 Subclass, (3) the Settlement Class and Statutory Subclass Representatives' claims are typical of those  
26 of the Settlement Class and Statutory Subclass Members, and (4) the Settlement Class and Statutory  
27 Subclass Representatives fairly and adequately protect the interests of the Settlement Class and  
28

1 Statutory Subclass. The Court further finds that the Settlement Class and Statutory Subclass satisfy the  
2 requirements of Federal Rule of Civil Procedure 23(b)(3) for settlement purposes: common questions  
3 of law and fact predominate over questions affecting individual members, and a class action is a  
4 superior method for fairly and efficiently adjudicating the Litigation.

5 7. The Court hereby appoints the Plaintiffs listed in Exhibit 2 to the Settlement Agreement  
6 as Settlement Class Representatives.

7 8. The Court hereby appoints Gayle M. Blatt of the firm Casey Gerry Schenk Francavilla  
8 Blatt & Penfield, LLP, Norman E. Siegel of Stueve Siegel Hanson LLP and Cari Campen Laufenberg  
9 of Keller Rohrback L.L.P. as Class Counsel. The Court authorizes Class Counsel to enter into the  
10 Settlement on behalf of the Settlement Class Representatives and the Settlement Classes, and to bind  
11 them all to the duties and obligations contained therein, subject to final approval by the Court of the  
12 Settlement.

13 **Notice and Administration**

14 9. Verita is appointed as the Notice and Claims Administrator and shall perform all duties  
15 necessary for notice and administration as set forth in the Settlement Agreement and Notice Plan.  
16 Pursuant to the Settlement Agreement, Verita will make important documents, such as the Settlement  
17 Agreement and Claim Form (which Settlement Class members have the option to submit online),  
18 available on the Settlement Website.

19 10. The Court finds that the Notice Plan as set forth in the Settlement Agreement satisfies  
20 the requirements of due process and provides the best notice practicable under the circumstances  
21 pursuant to Federal Rule of Civil Procedure 23(e)(1). The form, content and method of providing Class  
22 Notice and the Notice Plan are reasonably calculated under the circumstances to inform the Settlement  
23 Class Members of the pendency and nature of the litigation, the terms and conditions of the Settlement  
24 Agreement, the right of Settlement Class Members to object to the Settlement Agreement or exclude  
25 themselves from the Settlement Class, including instructions about the process for doing so, and the  
26 Final Approval Hearing details such that the Notice and Notice Plan fully comply with the requirements  
27 of Rule 23(c) and (e). The Court approves the Notice and Notice Plan, including the Claim Form, and  
28

1 directs the Notice and Claims Administrator and the Parties to proceed with providing Notice to the  
2 Settlement Class as set forth in the Settlement Agreement, Notice Plan and this Order.

3 **Settlement Class Member Exclusions and Objections**

4 11. Settlement Class Members who request to opt-out and exclude themselves from the  
5 Settlement Class must do so by notifying the Notice and Claims Administrator in writing. To be valid,  
6 each Person wishing to opt-out of the Settlement Class shall: (i) include the case name of the Litigation:  
7 *In Re: 23andMe, Inc., Customer Data Security Breach Litigation*, Case No. 24-md-03098-EMC; (ii)  
8 identify the name and current address of the Person seeking exclusion from the Settlement; (iii) be  
9 individually signed by the Person seeking exclusion using wet-ink signature, DocuSign, or other similar  
10 process for transmitting authenticated digital signatures; (iv) include an attestation clearly indicating  
11 the Person's intent (to be determined by the Settlement Administrator) to be excluded from the  
12 Settlement; and (v) attest that the Person seeking exclusion had a 23andMe user account as of August  
13 11, 2023. To be effective, written Opt-Out requests must be postmarked by the Opt-Out Deadline.  
14 Online Opt-Out requests must be submitted through the claims portal by the Opt-Out Deadline and  
15 must verify the Opt-Out request within three (3) business days following the Opt-Out Deadline using  
16 the link sent to the email address of the Settlement Class Member.

17 12. Settlement Class Members who submit a valid and timely Opt-Out Request will not be  
18 bound by the terms of the Settlement Agreement. Any Settlement Class Member who does not submit  
19 a timely Opt-Out Request in accordance with the Settlement Agreement will forfeit the opportunity to  
20 be excluded from the Settlement and will be bound by the Settlement Agreement upon entry of the  
21 Final Approval Order and Judgment.

22 13. Settlement Class Members who wish to object to the Settlement Agreement must do so  
23 by filing a timely written objection with the Court in accordance with the procedures outlined in the  
24 Class Notice, filed or postmarked no later than the Objection Deadline. The objection must include:

- 25 a. The case name and number of the Litigation;  
26 b. The full name, address, telephone number, and email address of the objecting  
27 Settlement Class Member;

- c. Information which verifies the objector is a Settlement Class Member, (e.g., a copy of the Class Notice or of the original notice of the Security Incident addressed to the objecting Settlement Class Member);
- d. A written statement of all grounds for the objection, accompanied by any legal support for the objection;
- e. A statement of whether the objection applies only to the objector, to a specific subset of the class, or to the entire class;
- f. A statement confirming whether the objector intends to personally appear or testify at the Final Approval Hearing;
- g. The identity of all counsel representing the objector and whether they will appear at the Final Approval Hearing;
- h. A statement of whether the objector has sold or otherwise transferred the right of their recovery to this Litigation to another person or entity, and, if so, the identity of the person or entity; and
- i. The objector's signature or other duly authorized representative.

14. To be timely, written notice of an objection in the appropriate form must be filed with the Court, either electronically or in person, or mailed and postmarked to the Class Action Clerk for the Northern District of California 450 Golden Gate Ave., San Francisco, CA 91402, no later than the Objection Deadline.

15. Any Settlement Class Member who does not timely submit a written objection pursuant to the procedures outlined above and as detailed in the Notice and Settlement Agreement waives the right to object or be heard at the Final Approval Hearing and shall be forever barred from making any objection to the Settlement Agreement.

**Final Approval Hearing**

16. The Court will hold a Final Approval Hearing on \_\_\_\_\_, 2025, in the Courtroom 5, 17<sup>th</sup> Floor of the United States District Court, San Francisco Courthouse, located at 450 Golden Gate Avenue, San Francisco, CA 94102.

17. At the Final Approval Hearing, the Court will review, and rule on, the following issues:
- a. Whether this matter should be finally certified as a class action for settlement

1 purposes under Fed. R. Civ. P. 23(a) and (b)(3)

2 b. Whether the settlement should be approved as fair, reasonable, and adequate  
3 under Fed. R. Civ. P. 23(e)

4 c. Whether a Final Approval Order and Judgment should be entered;

5 d. Whether the Settlement Class Members should be bound by the releases set  
6 forth in the Settlement Agreement;

7 e. Whether the application of Class Counsel for an award of attorneys' fees,  
8 costs, and expenses should be approved under Fed. R. Civ. P. 23(h) and the  
9 amount, if any, of any Service Awards to the Settlement Class

10 Representatives; and

11 f. Any other issues the Court deems appropriate.

12 18. Settlement Class Members do not need to attend the Final Approval hearing, nor take  
13 any other action to indicate their approval of the proposed Settlement Agreement. Settlement Class  
14 Members who wish to be heard must appear at the Final Approval Hearing. The Final Approval Hearing  
15 may be postponed, adjourned, transferred, or continued without further notice to the Settlement Class  
16 Members.

17 **Reasonable Procedures**

18 19. Class Counsel and Defense Counsel are hereby authorized to use all reasonable  
19 procedures in connection with approval and administration of the Settlement that are not materially  
20 inconsistent with this Order or the Amended Settlement Agreement, including making, without further  
21 approval of the Court, minor changes to the form or content of the notices and other exhibits that they  
22 jointly agree are reasonable or necessary to further the purpose of effectuating the Settlement  
23 Agreement.

24 **Extension of Deadlines**

25 20. Upon application of the Parties and good cause shown, the deadlines set forth in this  
26 Order may be extended by order of the Court, without further notice to the Settlement Class. Settlement  
27 Class Members must check the Settlement Website regularly for updates and further details regarding

1 extensions of these deadlines. The Court reserves the right to adjourn or continue the Final Approval  
 2 Hearing, and to extend the deadlines set forth in this Order, without further notice of any kind to the  
 3 Settlement Class.

4 **Settlement Administration Timeline, Injunction, and Termination**

5 21. To facilitate the timely administration of this case, the Court hereby sets the following  
 6 schedule:

Event	Deadline
Defendant to provide Settlement Class Member data to Settlement Administrator	20 days after entry of this Order
Last day for Settlement Administrator to email or mail, where email address is not available, Settlement Notice to Settlement Class Members	60 days after entry of this Order
Last day for Settlement Class Members to submit Claim Forms	90 days from the Notice Deadline
Deadline to Submit Motion for Attorneys' Fees, Costs and Service Awards	At least 35 days before the Objection Deadline
Deadline to Object and Comment on Settlement	35 days from the Notice Deadline
Deadline to Submit Request for Exclusion	35 days from the Notice Deadline
Final Approval Hearing	_____

7  
 8  
 9  
 10  
 11  
 12  
 13  
 14  
 15  
 16  
 17 22. All proceedings and deadlines in this matter, except those required to implement this  
 18 Order and the Settlement Agreement, are hereby stayed and suspended until further order from the  
 19 Court.

20 23. Preliminary Injunction. Pending final determination of whether the Settlement  
 21 Agreement should be finally approved, all Settlement Class Members and their representatives are  
 22 barred and enjoined, unless and until they have received Notice and have submitted a valid request to  
 23 exclude themselves from the Settlement Class under the process set out in the Settlement Agreement,  
 24 from filing, commencing, prosecuting, conducting, continuing or enforcing any action or proceeding  
 25 against the Released Parties insofar as such action asserts Released Claims, directly or indirectly, in  
 26 any judicial, administrative, arbitral, or other forum. The Court finds that issuance of this bar and  
 27 preliminary injunction is necessary and appropriate to protect the Settlement, implement the terms of  
 28



1 this Preliminary Approval Order, aid and preserve this Court’s authority to effectuate the Settlement,  
2 and is ordered in aid of this Court’s jurisdiction.

3           24. In the event that the Settlement Agreement is terminated pursuant to the terms of the  
4 Settlement Agreement, (1) the Settlement Agreement and this Order shall become null and void and  
5 shall be without prejudice to the rights of the parties, shall have no further force or effect, and shall not  
6 be used in this litigation or any other proceedings for any purpose other than as necessary to enforce  
7 the terms of the Settlement Agreement that survived termination, (2) this litigation will revert to the  
8 status that existed before the Settlement Agreement was executed, and (3) no term(s) or draft(s) of the  
9 Settlement Agreement or any part of the settlement discussions, negotiations, or documentation of any  
10 kind, related to the Settlement Agreement whatsoever shall (a) be admissible into evidence for any  
11 purpose in this litigation or in any other action or proceeding other than as may be necessary to enforce  
12 the terms of the Settlement Agreement that survived termination, (b) be deemed an admission or  
13 concession by any settling party regarding the validity of any of the Released Claims or the propriety  
14 of certifying any class against Defendant, or (c) be deemed an admission or concession by any of the  
15 parties regarding the truth or falsity of any facts alleged in the litigation or the availability or lack of  
16 availability of any defense to the Released Claims.

17           **IT IS SO ORDERED.**

18  
19 Dated: \_\_\_\_\_

Hon. Edward M. Chen  
United States District Court Judge

## EXHIBIT 2

**Exhibit 2 – Settlement Class Representatives**

Adriane Farmer  
Alexandra Hoffman  
A.B.  
Anna DaVeiga  
Benjamin Woessner  
Bonnie Eden  
Britany DeLoach  
Camie Picha  
Claire Paddy  
Cody Vogel  
Daniel Anderson  
David Tso  
Eileen Mullen  
Emily Beale  
Harold Velez  
Jaime Kelly  
J.S.  
Kathleen Loftus  
Lenora Claire  
L.G.  
M.L.  
Melissa Ryan  
Michele Bacus  
Neil Haven  
Pamela Zager-Maya  
R.T.  
Rachel DeCarlo  
Samantha Van Vleet  
Thomas Vickery  
Tracie Payne Mitchell  
Tracy Scott

# **Exhibit B**

## **23andMe Settlement Benefits Plan**

1. Capitalized Terms: Unless defined herein, the capitalized terms used in this Settlement Benefits Plan are defined in the Settlement Agreement and Release.

2. Administration of Claims: The Notice and Claims Administrator (referred to herein as the “Settlement Administrator”) shall administer and calculate the claims submitted by Settlement Class Members in accordance with the Settlement Benefits Plan. Class Counsel and 23andMe’s Counsel shall be given reports as to both claims and distribution as set forth in the Settlement Agreement. Any determination by the Settlement Administrator regarding the validity or invalidity of any such claims shall be binding, though the Administrator may confer with Class Counsel as issues may arise.

3. Net Settlement Fund: The “Net Settlement Fund” is the Settlement Fund less (1) Notice and Administrative Costs; (2) attorneys’ fees and expenses awarded by the Court; (3) Service Awards to Settlement Class Representatives awarded by the Court; and (4) costs associated with procurement of Privacy & Medical Shield + Genetic Monitoring as described in the Motion for Preliminary Approval and accompanying declarations. The Settlement Administrator shall use the Net Settlement Fund to pay valid claims for Extraordinary Claims, Health Information Claims, and Statutory Cash Claims as set forth below. The Settlement Administrator, subject to such supervision and direction of the Court and Class Counsel as may be necessary or as circumstances may require, shall administer and oversee distribution of the Net Settlement Fund pursuant to the process set forth in this Settlement Benefits Plan.

4. Extraordinary Claims: An “Extraordinary Claim” may be submitted by any Settlement Class Member and such claims are limited to verifiable unreimbursed costs or expenditures up to \$10,000 that a Settlement Class Member actually incurred on or after August 11, 2023, through the date of the submission of the Claim Form, and that the Settlement Class Member establishes are related to the Security Incident. Extraordinary Claims shall be paid pursuant to the schedule as set forth in Paragraph 7. Extraordinary Claims shall be limited to:

- a. Unreimbursed costs, expenses, losses or charges incurred as a direct result of identity fraud or falsified tax returns that the Settlement Class Member establishes were the result of the Security Incident.

- b. Unreimbursed costs or expenses associated with the purchase of a physical security or monitoring system that a Settlement Class Member establishes was purchased in response to the Security Incident.
- c. Unreimbursed costs or expenses associated with seeking professional mental health counseling or treatment that a Settlement Class Member establishes was incurred as a result of the Security Incident.

5. Health Information Claims: A “Health Information Claim” may be submitted by any Settlement Class Member who received notice from 23andMe that their health information including (i) uninterpreted raw genotype data, (ii) certain health reports derived from the processing of their genetic information, including health-predisposition reports, wellness reports and carrier status reports, or (iii) self-reported health condition information was involved in the Security Incident. Health Information Claims will be paid a fixed \$100 cash payment from the Health Information Fund. Health Information Claims shall be paid pursuant to the schedule set forth in Paragraph 7.

6. Statutory Cash Claims: In addition to Extraordinary Claims, and/or Health Information Claims, a “Statutory Cash Claim” may be claimed by any Settlement Class Member who was a resident of Alaska, California, Illinois, or Oregon on August 11, 2023. Statutory Cash Claims shall be paid pursuant to the schedule set forth in Paragraph 7.

7. Payment Schedule: All Extraordinary Claims, Health Information Claims, and Statutory Cash Claims shall be paid pursuant to the following schedule:

- a. Valid Extraordinary Claims shall be paid from the Net Settlement Fund up to a total cap of \$5,000,000 (the “Extraordinary Claims Fund”). If the total amount of valid Extraordinary Claims exceeds the Extraordinary Claims Fund, payment of the Extraordinary Claims will be reduced on a pro-rata basis. If the total amount of valid Extraordinary Claims is less than the Extraordinary Claims Fund, the balance of the Extraordinary Claims Fund will be added to the Statutory Cash Claim Fund.
- b. Valid Health Information Claims shall be paid from the Net Settlement Fund up to a total cap which shall have sufficient funds available to pay each valid Health Information Claim but no greater than \$750,000 (“Health Information Claims Fund”). If the amount of valid Health Information Claims is less than the Health Information Claims Fund, the balance of the

Health Information Claims Fund will be added to the Statutory Cash Claim Fund.

- c. Valid Statutory Cash Claims shall be paid on a pro-rata basis from the “Statutory Cash Claim Fund,” which shall be the Net Settlement Fund less valid claims paid from the Extraordinary Claims Fund and the Health Information Claims Fund.

8. Remaining Funds: Any remaining funds resulting from the failure of Settlement Class Members to timely negotiate a settlement check or to timely provide required tax information such that a settlement check could issue, shall be used to extend the active period for Privacy & Medical Shield + Genetic Monitoring. No funds may revert to 23andMe.

9. “Claims Deadline” is the last day for Claim Forms to be uploaded online, or postmarked and mailed to the Claims Administrator.

10. “Claim Form” means the document made available pursuant to the provisions of the Settlement Benefits Plan in order to obtain certain benefits under this Settlement Agreement.

11. Claims Period: The “Claims Period” is the period starting from the date the Court enters the Preliminary Approval Order and ending 90 days after the Notice Deadline. Settlement Class Members must submit Claims for Extraordinary Claims, Health Information Claims, and Statutory Cash Claims during the Claims Period.

12. Claims Process: Settlement Class Members may submit Claim Forms to the Settlement Administrator electronically on the Settlement Website or may print a Claim Form for mailing from the Settlement Website. The Settlement Administrator shall verify that each individual who submits a Claim Form is a Settlement Class Member and shall be responsible for validating all claims.

a. Extraordinary Claims:

- i. Settlement Class Members with Extraordinary Claims must attest to the accuracy of their Claim Forms and submit Reasonable Documentation supporting their Extraordinary Claims. “Reasonable Documentation” means documentation supporting a claim, including but not limited to: credit card statements, bank statements, invoices, receipts, or other documents substantiating unreimbursed costs, expenses, losses or charges as a direct result of the Security

Incident subject to the limitations set forth in (4)(a)-(c). Personal certifications, declarations, or affidavits from the claimant do not constitute Reasonable Documentation for Extraordinary Claims under 4(a)-(c), but may be included to provide clarification, context or support for other submitted Reasonable Documentation.

- ii. In determining whether a claim under (4)(a)-(c) is valid, the Settlement Administrator shall consider: (1) the timing of the loss, including whether the loss occurred on or after August 11, 2023, through the date of the Settlement Class Member's Claim Form submission; (2) whether the loss involved the misuse of the type of Personal Information compromised in the Security Incident; (3) whether the Personal Information compromised in the Security Incident is related to the Settlement Class Member and is of the type that was misused; (4) the Class Member's explanation as to how the loss is related to the Security Incident; and (5) any other factor that the Settlement Administrator considers to be relevant.
- iii. The Settlement Administrator shall have the sole discretion and authority to determine the validity of Extraordinary Claims but may confer with Class Counsel.

b. Health Information Claims:

- i. Settlement Class Members with Health Information Claims must submit a Claim Form.
- ii. The Settlement Administrator shall have the sole discretion and authority to determine the validity of Health Information Claims but may confer with Class Counsel.

c. Statutory Cash Claims:

- iii. Settlement Class Members with Statutory Cash Claims must submit a Claim Form attesting they were a resident of Alaska, California, Illinois, or Oregon on August 11, 2023, and include the residential address where they resided on that date if other than the address provided on their Claim Form as their current residential address.



- iv. The Settlement Administrator shall have the sole discretion and authority to determine the validity of Statutory Cash Claims but may confer with Class Counsel.

d. Privacy& Medical Shield + Genetic Monitoring:

- i. Settlement Class Members are encouraged to submit a Claim Form requesting enrollment in the Privacy & Medical Shield + Genetic Monitoring. Settlement Class Members who submit a Claim Form for monitoring will be provided with an enrollment code by email after the Effective Date of the Settlement. However, even if a Settlement Class Member does not submit a Claim Form by the Claims Deadline, they can still take advantage of the monitoring services at any time during the three years the monitoring is effective by visiting the Settlement Website and using the contact information provided there for obtaining an enrollment code. Settlement Class Members who enroll after the three-year monitoring period begins will only receive monitoring for the remainder of the three-year period.

13. Payment Method and Timing: Settlement Class Members who make an Extraordinary Claim, a Health Information Claim, and/or a Statutory Payment Claim will be able to select a method of payment, including options for digital payment via PayPal, Venmo, or Zelle. Checks and/or digital payments for approved claims and activation codes for Privacy & Medical Shield + Genetic Monitoring shall be electronically or digitally transmitted or mailed and postmarked to Settlement Class Members within sixty (60) days of the Effective Date, or promptly after enrollment for Settlement Class Members who do not submit a Claim Form for this service during the Claims Period.

14. Disputes:

- a. To the extent the Settlement Administrator determines a claim is deficient in whole or part, within twenty-one (21) days after the Settlement Administrator processes all claims, the Settlement Administrator shall notify the Settlement Class Member in writing (including by e-mail where the Settlement Class Member selects e-mail as their preferred method of communication) of the deficiencies and provide the Settlement Class Member thirty (30) days to cure the deficiencies. The notice shall inform

the Settlement Class Member that they can either attempt to cure the deficiencies outlined in the notice, or dispute the determination in writing. If the Settlement Class Member attempts to cure the deficiencies or disputes the determination but, in the sole discretion and authority of the Settlement Administrator fails to do so, the Settlement Administrator shall notify the Settlement Class Member of that determination within fourteen (14) days of the determination.

- b. The Settlement Administrator shall have the sole discretion and authority to determine whether a claim is deficient in whole or part but may consult with Class Counsel in making individual determinations subject to this dispute process.

15. Miscellaneous:

- a. No Person shall have any claim against the Settlement Administrator, 23andMe, Class Counsel, 23andMe's Counsel, any of the Released Parties and/or the Settlement Class Representatives based on distributions of benefits to Settlement Class Members.
- b. Information submitted by Settlement Class Members pursuant to the terms of this Settlement Agreement shall be deemed confidential and protected as such by Class Counsel, 23andMe, CyEx, and the Settlement Administrator.

16. Modification of Settlement Benefits Plan: Should the Parties agree, after Final Approval of the Settlement Agreement, that the provisions of this Settlement Benefits Plan should be modified in the interests of justice, they shall seek the Court's approval for such modification.

# **Exhibit C**

**CASE COMPARISON CHART**

<b>Case</b>	<b>Fund</b>	<b>Class Size</b>	<b>Type of Notice</b>	<b>Type of Claims</b>	<b>Claims Rate and Other Information</b>
<p><i>Premiera Blue Cross Data Breach Litig.</i>, 3:15-md-02633-SI, Docs. 273, 280, 281, 284, 311 (D. Or.) (data breach involving compromise of protected health information)</p> <p>Final approval granted on 3/2/2020</p>	\$32,000,000	8,855,764	Direct and publication notice	Negligence; breach of contract; California Confidentiality of Medical Information Act; Washington's Consumer Protect Act	Claims: 691,870 Claims Rate: 7.81% \$12,752,610.97 in attorneys' fees
<p><i>Aguallo v. Kemper Corp.</i>, No. 1:21-cv-01883, Docs. 45, 46, 51, 53, (N.D. Ill) (data breach involving compromise of PII, medical leave information, and workers' compensation claim information)</p> <p>Final approval granted on 3/18/2022</p>	\$17,600,000	6,148,631	Direct notice	Common law tort claims, California unfair competition and Legal Remedies Act, CCPA, declaratory judgment, unjust enrichment	Claims: 11,284 Claims Rate: <1% \$2,500,000 in attorneys' fees Admin costs paid separately outside the fund California claimants receive additional statutory payment of up to \$50
<p><i>In re Ashley Madison Customer Data Security Breach Litig.</i>, 4:15-md-02669-JAR, Docs. 344, 383, 384, 389 (E.D. Mo.) (data breach involving compromise of sensitive customer information, including identities of the customers)</p> <p>Final approval granted on 11/20/2017</p>	\$11,200,000	37,000,000	Publication notice only	Common law tort claims, consumer protection claims, CCRA, state data breach claims, violations of RICO and Federal Stored Communications Act	Claims: 4,236 submitted with 3,849 valid Claims Rate: <1% Avg. of >\$940/claimant 33% attorneys' fees ~\$309,240 in admin costs Cy Pres: \$3,320,110.93

Case	Fund	Class Size	Type of Notice	Type of Claims	Claims Rate and Other Information
<p><i>Atkinson, et al. v. Minted, Inc.</i> No. 3:20-cv-03869-VC (N.D. Cal.), Docs. 42, 60, 71, 73 (data breach involving compromise of customers' personally identifiable information)</p> <p>Final approval granted on 12/17/2021</p>	\$5,000,000	4,198,490	Publication and direct notice	Violation of CCPA, California Unfair Competition Law, and negligence	Claims: 147,268 Claims Rate: 3.5% \$1,187,537.05 (23.75%) in attorneys' fees \$200,000 in notice and admin costs
<p><i>Cochran et al. v. The Kroger Co.</i> No. 5:21-cv-01887-EJD (N.D. Cal.), Docs. 31, 104, 105, 115 (data breach involving compromise of sensitive personally identifiable information, including social security numbers)</p> <p>Final approval granted on 03/24/2022</p>	\$5,000,000	~ 3,825,200	Publication and direct notice	Negligence, breach of implied contract, violations of CCPA and CMIA	Claims: 38,823 Claims Rate: > 1% \$1,231,628 (25%) in attorneys' fees California claimants will receive twice the amount of non-CA residents due to CCPA and CMIA claims
<p><i>Heath v. Insurance Technologies Corp.</i>, 3:21-cv-01444-N, Docs. 35, 39, 45, 52 (N.D. Tex.) (data breach involving compromise of personally-identifiable information)</p> <p>Final approval granted on 01/04/2023</p>	\$11,000,000	4,341,523	Direct and publication notice	Negligence; negligence per se; violation of the CCPA, UCL, and Maryland's and Pennsylvania's privacy and consumer protection acts/laws, declaratory judgment and unjust enrichment	Claims: 17,923 Claims Rate: <1% \$3,000,000.00 in attorneys' fees California claimants entitled to statutory payments of \$100-300, subject to pro rata reduction

Case	Fund	Class Size	Type of Notice	Type of Claims	Claims Rate and Other Information
<p><i>Miracle-Pond v. Shutterfly, Inc.</i>, No. 2019-CH-07050 (Ill. Cir. Ct.) (privacy case involving collection, storage, and use of facial recognition data)</p> <p>Final approval granted on 9/9/2021</p>	\$6,750,000	950,000	Direct and publication notice	Violation of Illinois Biometric Information Privacy Act	Claims: 49,453 submitted Claims Rate: ~5% \$2,362,500 (35% of settlement value) in attorneys' fees
<p><i>In re TikTok, Inc., Consumer Privacy Litigation</i>, No. 1:20-cv-04699 (N.D. Ill.), Docs. 122, 135, 161, 195, 264 (privacy case involving collection, use, and transmission of highly sensitive personal data)</p> <p>Final approval granted on 8/22/2022</p>	\$92,000,000	89,000,000	Direct and publication notice	Violation of Illinois Biometric Information Privacy Act; Computer Fraud and Abuse Act; Video Privacy Protection Act; Breach of Contract; Invasion of Privacy; Other State Consumer Protection and Privacy Statutes	Claims: 1,215,541 submitted Claims Rate: ~1% \$29,279,203.44 (33.3% of settlement value) in attorneys' fees \$3,276,268.43 in admin costs
<p><i>In Re Facebook Biometric Information Privacy litigation</i>, 3:15-cv-03747-JD (N.D. Cal.), Docs. 468, 517, 537, 538, 586 (privacy case involving collection, and storage of individuals' biometric data)</p> <p>Final approval granted on 02/26/2021</p>	\$650,000,000	6,900,000	Direct and publication notice	Violation of the Illinois Biometric Information Privacy Act	Claims: ~1,500,000 Claims Rate: ~22% 97,500,000 (15% of total settlement fund) in attorneys' fees \$1,828,009.89 in admin

Case	Fund	Class Size	Type of Notice	Type of Claims	Claims Rate and Other Information
<p><i>In re Vizio, Inc., Consumer Priv. Litig.</i>, 8:16-ml-02693-JLS-KES, 2019 WL 12966638 (C.D. Cal. July 31, 2019), <i>judgment entered sub nom. In re VIZIO, Inc., Consumer Priv. Litig.</i>, 2019 WL 3818854 (C.D. Cal. Aug. 14, 2019) (privacy case involving claims that the company collected and shared data about customers' viewing habits without consent)</p> <p>Final approval granted on 07/31/2019</p>	\$17,000,000	16,000,000	Direct and publication notice	Video Privacy Protection Act, Wiretap Act, common law fraud and tort claims, a number of consumer protection claims including the CLRA and UCL	Claims: 511,537 claims for 655,161 TVs Claims Rate: approx. 4% ~\$16.50/claimant's TV 33% attorneys' fees \$122,830.65 in admin costs
<p><i>Fraley v. Facebook, Inc.</i>, 3:11-cv-1726-RS, 966 F. Supp. 2d 939 and Doc. 351 (N.D. Cal. 2013), <i>aff'd sub nom. Fraley v. Batman</i>, 638 F. App'x 594 (9th Cir. 2016) (privacy case involving claims that Facebook used images of users without their consent to sell advertising)</p> <p>Final approval granted on 09/09/2013</p>	\$20,000,000	150,000,000	Direct and publication notice	Cal. Civil Code § 3344; Cal. Unfair Competition Law, Business and Professions Code § 17200	Claims: 614,994 Claims Rate: <1% \$15/claimant 25% attorneys' fees \$935,828.21 in admin costs Cy Pres: ~\$2 million