IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

TONI GUTHRIE, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

23ANDME, INC.,

Defendant.

JURY TRIAL DEMANDED

FILED ELECTRONICALLY

CLASS ACTION COMPLAINT

Plaintiff Toni Guthrie, on behalf of herself and on behalf of the similarly situated members of the Class (defined below), by and through her undersigned counsel, makes the following allegations based upon information and belief, except as to allegations specifically pertaining to Plaintiff and her counsel, which are based on personal knowledge. Plaintiff brings this action for damages, restitution, and injunctive relief against Defendant 23andMe, Inc. ("23andMe" or "Defendant"), demanding a trial by jury.

NATURE OF THE ACTION

1. This is a proposed class action brought by Plaintiff on behalf of herself and other Class Members against Defendant to obtain relief, including damages, restitution, and injunctive relief. This action is brought to remedy violations of law in connection with 23andMe's design, manufacture, marketing, advertising, selling, warranting and servicing of its DNA Saliva Collection Kit/Personal Genome Service ("DNA Kit" or "Kit").

2. Plaintiff and the members of the proposed Class are or were purchasers of 23andMe's DNA Kit, which Defendant advertised and warranted could accurately determine and forecast, among other things, an individual's susceptibility to and likelihood of developing

various health conditions and traits, as well as responses to certain drugs. 23andMe made these representations without any scientific or clinical validation whatsoever that its DNA Kits are accurate, reliable or fit for its advertised uses. In fact, despite holding them out as medical diagnostic tools, 23andMe's DNA Kits have never received marketing authorization or approval from the U.S. Food and Drug Administration ("FDA").

3. Over the course of several years, the FDA repeatedly warned 23andMe that its DNA Kits were misleading and were being sold without the appropriate regulatory approval. In spite of these multiple FDA warnings, however, 23andMe continued to sell its DNA Kits to unsuspecting consumers, in Pennsylvania and elsewhere, until December 6, 2013, when the FDA finally issued a formal order demanding that 23andMe "immediately discontinue" sales of its DNA Kits because of its failure to analytically or clinically validate their efficacy or accuracy.

4. 23andMe's acts and omissions in connection with its design, manufacture, marketing, advertising, selling, warranting, and servicing of their DNA Kits violate Pennsylvania's unfair competition and false advertising laws, and constitute breaches of implied and express warranties.

THE PARTIES

5. Plaintiff Toni Guthrie is a Pennsylvania citizen residing in Allegheny County, Pennsylvania.

6. Defendant 23andMe, Inc. is a Delaware corporation doing business in Pennsylvania. 23andMe, Inc.'s corporate headquarters are located at 1390 Shorebird Way, Mountain View, California 94043.

JURISDICTION AND VENUE

7. This Court has original jurisdiction over the claims asserted herein pursuant to 28 U.S.C. § 1332(d)(2). Jurisdiction is proper because (1) the amount in controversy in this proposed Class action exceeds five million dollars, exclusive of interest and costs; and (2) some members of the proposed Class, including Plaintiff Guthrie, are citizens of a state different from that of Defendant 23andMe.

8. Personal jurisdiction is proper as 23andMe has purposefully availed itself of the privilege of conducting business activities within the Commonwealth of Pennsylvania and has continuing and systemic contacts with the Commonwealth of Pennsylvania.

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claims asserted occurred in the Western District of Pennsylvania and because, at all relevant times, 23andMe marketed, advertised, distributed and sold its DNA Kits in the Western District of Pennsylvania.

FACTUAL BACKGROUND

10. 23andMe's DNA Kit is an at-home genetic test that was sold directly to consumers through its website and other retailers. 23andMe claimed its Kits could accurately and reliably help consumers know more about their health.

11. Through extensive advertising and marketing in multiple media outlets, 23andMe represented that its DNA Kit could (a) test for over 240 "conditions" and genetic traits, (b) predict how a consumer would respond to certain medications, and (c) determine whether the consumer's children are at risk for inherited conditions.

12. Once a consumer purchased 23andMe's DNA Kit and submitted a saliva sample, the Company would produce a personalized "report" to that consumer, ostensibly regarding their DNA information.

13. To date, 23andMe has failed to scientifically or clinically validate the accuracy or reliability of their DNA Kits or obtain regulatory approval to market and sell its Kit.

Government Scrutiny of 23andMe and the Home Genetic Testing Industry

14. The direct-to-consumer genetic testing industry has long been subject to government scrutiny and criticism due to the lack of regulatory approval and lack of clinical validation of its methods, processes and conclusions.

15. In 2006, the Secretary's Advisory Committee on Genetic Health and Society ("SACGHS") sent a letter to the Secretary of the U.S. Department of Health and Human Services urging the Federal Trade Commission ("FTC") and the FDA to raise public awareness about issues related to home genetic testing.

16. In response to the SACGHS's letter, the FTC, FDA and Centers for Disease and Prevention issued a warning to consumers about the risks associated with these genetic tests entitled "At-Home Genetic Tests: A Healthy Dose of Skepticism May Be the Best Prescription" wherein they discuss the misleading nature of these genetic tests for potential medical issues.

17. The U.S. Government Accountability Office ("GAO") investigated these genetic tests for nutritional and lifestyle advise in 2006. The GAO then issued a report entitled "Nutrigenetic Testing: Tests Purchased from Four Web Sites Mislead Consumers," which questioned the validity of these tests' results.

18. In 2008, the SACGHS issued a report entitled "Realizing the Potential of Pharmacogenomics: Opportunities and Challenges" wherein it expressed concern with the advertising of home genetic tests and the lack of regulatory oversight.

19. The FTC issued another warning in 2008 entitled "At-Home Genetic Tests: Health Information for Older People," again recommending that consumers talk to a health care provider before and after taking such test. The FTC's warning also recommended that consumers carefully read the privacy policy posted by the testing companies.

20. A 2010 report by the SACGHS entitled "Direct-to-Consumer Genetic Testing" highlighted several problem areas that limit the consumer's ability to make informed decisions, including, *inter alia*, lack of federal oversight of at home genetic tests, lack of evidence of clinical validity and or clinical utility for most tests, privacy and research protections and limited knowledge about genetics from consumers, or training for health care providers who are asked about test results by their patients.

21. Also in 2010, the GAO revisited genetic testing in a report entitled "Direct-to-Consumer Genetic Tests: Misleading Test Results are Further Complicated by Deceptive Marketing and Other Questionable Practices" wherein it found that the industry was plagued by inconsistent results and, additionally, noted that some companies made improper claims while marketing their products.

22. In May 2010, the House Committee on Energy and Commerce opened an investigation into home genetic testing and requested information on several aspects of the tests from 23andMe and other providers.

23. In June 2010, the FDA sent warning letters to genetic testing providers, including 23andMe, advising them that their DNA Kits were being marketed and sold without the

appropriate regulatory approval, specifically as a result of 23andMe's failure to submit any information regarding their analytical or clinical validity.

24. As a result of the FDA's June 2010 warning letter, several at-home genetic testing providers changed their business models or left the business entirely. 23andMe, however, publicly disagreed with the FDA's conclusion and continued to sell and market its DNA Kits.

25. In July 2012, 23andMe filed a 501(k) application with the FDA seeking clearance to sell and market its DNA Kits as medical devices. However, the FDA withdrew their application in May 2013, after 23andMe failed to provide "adequate information" in support of its application. In spite of the withdrawal of their application, 23andMe continued to sell and market its DNA Kits as medical devices.

26. Finally, on November 22, 2013, the FDA issued a warning letter to 23andMe demanding that they discontinue the sales of its DNA Kits.

27. In their letter to 23andMe, the FDA stated that "to date your company has failed to address the issues described during previous interactions with the Agency. . . .[E]ven after these many interactions with 23andMe, we still do not have any assurance that the firm has analytically or clinically validated the PGS [DNA Kits] for its intended use."

28. The November 2013 FDA letter went on to note that, "[t]o date, 23andMe has failed to provide adequate information to support a determination that the PGS [DNA Kit] is substantially equivalent to a legally marketed predicate for any of the uses for which you are marketing it; no other submission for the PGS device that you are marketing has been provided under section 510(k) of the Act, 21 U.S.C. § 360(k)."

29. The November 2013 FDA letter also cited concerns about the manner in which 23andMe advertised their DNA Kit and the public dangers regarding false positives and false negatives for the serious health conditions for which the DNA Kits purportedly tested.

30. The FDA's letter addressed several concerns including how the unregulated Kits could potentially lead to deadly outcomes: "The risk of serious injury or death is known to be high when patients are either non-compliant or not properly dosed; combined with the risk that a direct-to-consumer test result may be used by a patient to self-manage, serious concerns are raised if test results are not adequately understood by patients or if incorrect test results are reported."

31. The FDA's November 2013 letter could not have been clearer. 23andMe has provided nothing to assure the FDA that their DNA Kits are analytically or clinically validated for its intended use.

32. The sale and advertising of 23andMe's DNA Kits violated the Federal Food, Drug, and Cosmetic Act ("FD&C Act") because they failed to establish the validity of its marketing claims to the FDA, and also because they failed to obtain marketing permission or approval from the FDA.

33. On November 25, 2013, 23andMe stopped advertising its DNA Kits, and on December 6, 2013, they suspended the sales of their DNA Kits for health information. However, 23andMe continues to market the Kits to provide ancestry information and raw genetic data while, of course, continuing to collect and aggregate their customers' private genetic data.

34. To date, the FDA still has not received any assurance that the Defendant has analytically or clinically validated its DNA Kit for its intended uses.

23andMe's False and Misleading Representations Concerning Purported Health Benefits

35. 23andMe represented and advertised that their DNA Kits would improve consumers' health. Examples from their website include the following:

a) "Learn hundreds of things about your health. Using your DNA information, 23andMe helps you know how more about your health so you can take an active role in managing it. With reports on over 240+ health conditions and traits, here are a few of the things you'll learn about you."

b) "Plan for the future. Find out if your children are at risk for inherited conditions, so you can plan for the health of your family."

c) "Living well starts with knowing your DNA."

d) "Health tools - Document your family health history, track inherited conditions, and share the knowledge."

e) "Drug response - Arm your doctor with information on how you might respond to certain medications."

f) "Below are a few examples [diabetes, arthritis, coronary heart disease, breast cancer, plavix, lactose intolerance] where we can help you learn more. And when you know more, you can make better lifestyle choices, look out for common conditions and take steps toward mitigating serious diseases."

36. On July 22, 2010, Dr. Jeffrey Shuren, Director of the Center for Devices and Radiological Health at the FDA, addressed the U.S. House of Representatives Committee on Energy and Commerce in a statement titled "Direct-to-Consumer Genetic Testing and the Consequences to the Public" where he emphasized the increased risks of marketing these tests directly to consumers:

> Marketing genetic tests directly to consumers can increase the risk of a test because a patient may make a decision that adversely affects their health, such as stopping or changing the dose of a medication or continuing an unhealthy lifestyle, without the intervention of a learned intermediary. The risk points up the importance of ensuring that consumers are also provided accurate, complete, and understandable information about the limitations of test results they are obtaining…[N]one of the genetic tests now offered to consumers has undergone premarket review by FDA to

> ensure that the test results being provided to patients are accurate, reliable, and clinically meaningful.

37. More than three years after Dr. Shuren's address to the House of Representatives, 23andMe's health assertions, statements and representations are still unfounded and unsupported by any scientific or factual basis.

38. Consumers would not have purchased the DNA Kits if they knew that Defendant's representations were false or that the product was being sold without FDA approval.

39. Defendant was and is aware of the misleading nature of its product by way of countless internet articles and consumer complaints:

> As I recently reported, a 23andMe test claimed that I have all sorts of health risks lurking in my genes, from triple the usual risk for age-related macular degeneration (the top cause of vision loss in seniors) to an increased threat of psoriasis, chronic kidney disease, asthma, migraines, celiac disease, and bipolar disorder. At the time, I had wondered how seriously to take these findings, given that many of the test's predictions obviously missed the mark. For example, according to 23andMe's analysis of my DNA, I have brown eyes, curly hair, wet earwax, and can digest dairy products normally. In reality, I have stick-straight hair, green eyes, dry earwax, and am lactose intolerant. In another section of the report, 23andMe even got my age wrong (by more than a decade) and incorrectly predicted my blood pressure and cholesterol level. Nor do I have any signs of the health threats listed above, though several of them have affected my relatives. In light of the FDA's move, I now question if 23andMe's predictions about my health are any more accurate than my horoscope.
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> My health report was amusing to say the least. Apparently I have curly red hair and I'm likely to have either brown or green eyes. Well, I have straight jet black hair and my eyes are as dark, too. For my husband's it claims he doesn't have the bald gene-----tell that to his bald spot. It claims I can eat dairy. Nope. Never could. The list goes on and on. It's a waste of money and I'm glad the FDA stepped in to stop them. All of the supporters of 23andMe blindly accept their results, but most are not able to read raw data and decipher what is what. I cannot express my disappointment

> more, really. If only I could give this product a zero rating for a big fat fail.

Plaintiff Guthrie's Experience With Her DNA Kit

40. On July 17, 2013, Plaintiff Guthrie purchased two DNA Kits for $193.15 from 23andMe after seeing and relying on their print and online advertising suggesting that the Kits could, reliably and accurately, reveal things about a person's health using his or her DNA information.

41. Plaintiff provided her saliva sample on the provided stick, mailed the sample to the indicated location, and later received an email notifying her that her results were ready to be reviewed.

42. The health results provided by 23andMe included claims about Plaintiff Guthrie's genetic predisposition to certain diseases and conditions.

43. Plaintiff Guthrie relied on the results and information provided by 23andMe and made lifestyle changes, including increased medical testing and monitoring, and became much more concerned about her future health issues.

44. Plaintiff Guthrie would not have purchased the DNA Kits had she known the results would be false, unsubstantiated, misleading and inaccurate.

CLASS ACTION ALLEGATIONS

45. The Class that Plaintiff seeks to represent is defined as follows:

> All persons who purchased a DNA Kit in the Commonwealth of Pennsylvania for primarily personal, family or household purposes, and not for resale within the Class Period.

Excluded from the Class are governmental entities, Defendant, any entity in which Defendant has a controlling interest, and Defendant's officers, directors, affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries, and assigns. Also excluded from the Class is any

judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff.

46. Plaintiff reserves the right to modify the Class definition based on the results of discovery.

47. Plaintiff and the Class bring this action for damages, and equitable and injunctive relief pursuant to subdivisions (b)(1), (b)(2) and (b)(3) of Rule 23 of the Federal Rules of Civil Procedure.

48. Numerosity: The proposed Class is so numerous that individual joinder of all its members is impracticable. The total number of Class Members is at least in the hundreds (likely thousands) and members of the Class are geographically dispersed across Pennsylvania. While the exact number and identities of the Class Members are unknown at this time, such information can be ascertained through appropriate investigation and discovery, and that information is within the custody and control of Defendant. The disposition of the claims of the Class Members in a single class action will provide substantial benefits and efficiencies to all parties and to the Court.

49. Common Questions of Law and Fact Predominate: There are questions of law and fact common to the representative Plaintiff and the Class, and those questions substantially predominate over any questions that may affect individual Class Members. Common questions of fact and law include, but are not limited to, the following:

a. Whether 23andMe advertised and sold its DNA Kits with knowledge of its unreliable, ineffective, incomplete and misleading results;

b. Whether 23andMe's advertising was unfair, deceptive, untrue, or misleading;

c. Whether 23andMe obtained appropriate and timely approval from the FDA to market its DNA Kits and place them into the stream of commerce;

d. Whether 23andMe fairly and adequately disclosed their terms of service to Plaintiff and the Class;

e. Whether 23andMe's terms of service include unconscionable or illusory terms;

f. Whether 23andMe engaged in unfair methods of competition, unconscionable acts or practices, and/or unfair or deceptive acts or practices in connection with the sale of the DNA Kits;

g. Whether 23andMe breached the express warranties and/or extended warranties made to Plaintiff and the Class with respect to the DNA Kits;

h. Whether 23andMe breached implied warranties with respect to the DNA Kits;

i. Whether 23andMe has been unjustly enriched;

j. The nature and amount of damages to Plaintiff and the Class as a result of 23andMe's improper conduct; and

k. Whether Plaintiff and the Class are entitled to equitable relief and/or any other relief as a result of 23andMe's improper conduct.

50. Typicality: Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all members of the Class have been similarly affected by Defendant's common course of conduct.

51. Adequacy of Representation: Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff has retained counsel with substantial experience in prosecuting complex and class action litigation, including cases involving defective products and/or false and misleading advertising. Plaintiff and her counsel are committed to vigorously prosecuting this action on behalf of the Class and have the financial resources to do so. Neither Plaintiff nor her counsel have any interests adverse to those of the Class.

52. Superiority of a Class Action: Plaintiff and the members of the Class suffered, and will continue to suffer, harm as a result of Defendant's unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of the present controversy because individual joinder of all Class Members is impractical and because, while the aggregate damages sustained by the Class are likely in the millions of dollars, the individual damages incurred by each Class Member are too small to warrant the expense of individual suits. Moreover, even if individual Class Members had the resources to pursue individual litigation, it would be unduly burdensome to the court(s) in which the individual litigation(s) would proceed. The class action device allows a single court to provide the benefits of unitary adjudication, judicial economy, and the fair and equitable handling of all class members' claims in a single forum. The conduct of this action as a class action conserves the resources of the parties and of the judicial system and protects the rights of the class members. Furthermore, for many, if not most, class members, a class action is the only feasible mechanism that allows an opportunity for legal redress and justice.

53. Adjudication of individual Class Members' claims with respect to Defendant would, as a practical matter, be dispositive of the interests of other members not parties to the adjudication, and could substantially impair or impede the ability of other Class Members to protect their interests.

54. Plaintiff and her counsel do not anticipate any difficulty in the management of this litigation.

55. 23andMe has, or has access to, address information for the Class Members, which may be used for the purpose of providing notice of the pendency of this action.

FIRST CAUSE OF ACTION
VIOLATION OF PENNSYLVANIA'S UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW
73 Pa. Stat. Ann. § 201-1, *et seq.*

56. Plaintiff re-alleges the preceding paragraphs as if fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

57. Plaintiff and members of the Class are "persons" within the meaning of Pennsylvania's Unfair Trade Practices and Consumer Protection Law ("UTPCPL").

58. At all relevant times material hereto, 23andMe conducted trade and commerce in Pennsylvania and elsewhere within the meaning of the UTPCPL.

59. The UTPCPL defines "[u]nfair methods of competition" and "unfair or deceptive acts or practices" to include: "(ii) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services;" "(v) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have;" "(vii) Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;" and "(xxi) Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding."

60. The UTPCPL is, by its terms, a cumulative remedy, such that remedies under its provisions can be awarded in addition to those provided under separate statutory schemes and/or common law remedies.

61. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as a result of 23andMe's actions. Plaintiff and Class Members paid a premium price for their 23andMe DNA Kits, expecting an accurate and reliable health report. Nevertheless, the DNA

Kits have never produced accurate or reliable health reports and the DNA Kits have never been analytically or clinically validated. Plaintiff and Class Members thus did not obtain the value of the products for which they paid.

62. As detailed more fully in the following paragraphs, the acts and practices alleged herein were intended to and did result in the sale of DNA Kits in violation of the UTPCPL. Defendant's conduct further constitutes breach of warranty and unjust enrichment.

63. By violating these legal duties, Defendant has engaged in unlawful business acts and practices which constitute unfair competition within the meaning of 73 Pa. Stat. Ann. § 201-1, *et seq.*

64. 23andMe actively and extensively advertised, marketed and promoted the DNA Kits based on promises that it would help a customer know more about his or her health by reporting on over 240 health conditions and traits. Throughout the Class Period, 23andMe maintained a website and published marketing materials that are the primary tools for advertising and marketing the DNA Kits.

65. Plaintiff and Class Members each purchased a 23andMe DNA Kit. When doing so, Plaintiff reviewed and relied on the representations as detailed above. 23andMe also advertised that their DNA Kits could determine how a person would respond to certain drugs and whether they, or their children, are at risk for inherited conditions. Plaintiff and the Class Members relied on these representations when purchasing the DNA Kits. Nevertheless, the DNA Kits are unreliable and are unable to be used as intended.

66. 23andMe omitted any information about the lack of scientific validity associated with their DNA Kits, as well as its failure to obtain the FDA's approval to market and sell its

Kits. 23andMe concealed and failed to disclose the foregoing facts to Plaintiff and the Class Members.

67. 23andMe intended that Plaintiff and Class Members would rely on 23andMe's omissions in purchasing its DNA Kits, and that they would remain unaware of the material facts described above. This conduct constituted consumer fraud, an unfair business practice, and violation of the UTPCPL. Had Plaintiff and the Class Members known that the DNA Kits were unreliable and did not have the appropriate regulatory approval, they would either not have purchased the DNA Kits or would have negotiated a better price based on this knowledge.

68. 23andMe's failure to disclose its DNA Kits' lack of scientific validation and lack of regulatory approval was likely to deceive Plaintiff and the Class. 23andMe has thus committed deceptive acts or practices within the meaning of the UTPCPL by engaging in the acts and practices alleged herein.

WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

SECOND CAUSE OF ACTION
BREACH OF IMPLIED WARRANTY
13. Pa. Stat. Ann. § 2314

69. Plaintiff re-alleges the preceding paragraphs as if fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

70. Plaintiff seeks to recover for the Class based on 23andMe's breach of implied warranty under Pennsylvania statutory and common law.

71. 23andMe marketed and sold the DNA Kits, which it placed into the stream of commerce. 23andMe knew or had reason to know of the specific use for which the DNA Kits were purchased, and it impliedly warranted that the DNA Kits were of merchantable quality and fit for such use.

72. Plaintiff and the other Class Members relied on 23andMe's representations and omissions as described above and relied upon 23andMe's implied warranty in purchasing the DNA Kits.

73. Plaintiff's and the Class Members' DNA Kits were not of merchantable quality and became unfit for their ordinary purpose because 23andMe could not support its DNA Kits' results with any clinical or analytical validation.

74. Plaintiff's and other Class Members' DNA Kits did not conform to the promises or affirmations of fact made in advertising and marketing materials, including that the Kits would help a person know more about his or her health by reporting on over 240 health conditions and traits, that they could determine how a person would respond to certain drugs and determining whether he or she was at risk for inherited conditions.

75. 23andMe's waiver and/or limits on implied warranties are unconscionable, unenforceable, and/or illegal for many reasons: (1) Plaintiff had no meaningful choice in determining those time limitations; (2) the warranties were written by Defendant without input from Plaintiff; (3) a gross disparity in bargaining power existed as between Defendant and Plaintiff and Class Members; and (4) 23andMe knew or should have known that its DNA Kits were defective at the time of sale and were being marketed and sold without the FDA's approval.

76. Plaintiff's and the Class Members' DNA Kits became unfit for their ordinary purpose of providing accurate health reports within the implied warranty period because the Kits failed to ever provide scientifically or clinically validated results.

77. Plaintiff and the other Class Members have been damaged as described herein as a direct and proximate result of the failure of 23andMe to honor its implied warranty as Plaintiff

and Class Members would not have purchased the DNA Kits or would have paid less for them had they known the Kits were unreliable and unregulated.

WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

THIRD CAUSE OF ACTION
BREACH OF EXPRESS WARRANTIES
13 Pa. Stat. Ann § 2314

78. Plaintiff re-alleges the preceding paragraphs as if fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

79. Plaintiff seeks to recover for the Class based on 23andMe's breach of express warranty under the Pennsylvania statutory and common law.

80. 23andMe warranted that all DNA Kits were accurate and reliable, and further warranted by affirmation of fact that the DNA Kits would produce an accurate health report.

81. These warranties became part of the basis of the bargains between Plaintiff and the Class Members and 23andMe.

82. Defendant has breached these express warranties, as the DNA Kits were unreliable and failed to produce an accurate health report.

83. Despite receiving numerous complaints and other notices from its customers advising it that Class Members were experiencing incorrect and/or inconsistent results, 23andMe refuses to honor its warranties, even though it knows that its DNA Kits were unreliable prior to sale.

84. 23andMe's waiver and/or limits on express warranties are unconscionable, unenforceable, and/or illegal for several reasons: (1) Plaintiff had no meaningful choice in determining those time limitations; (2) the warranties were written by 23andMe without input from Plaintiff; (3) a gross disparity in bargaining power existed as between 23andMe and

Plaintiff and Class Members; and (4) 23andMe knew or should have known that its DNA Kits were unreliable at the time of sale.

85. As a direct and proximate result of Defendant's breach of express warranties, Plaintiff and Class Members have sustained damages and other losses in an amount to be determined at trial. Plaintiff and Class Members are entitled to recover damages, costs, attorneys' fees, rescission, and other relief as provided by statute or deemed appropriate by the Court.

WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

FOURTH CAUSE OF ACTION
UNJUST ENRICHMENT

86. Plaintiff re-alleges the preceding paragraphs as if fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

87. Plaintiff asserts this claim in the alternative on behalf of Plaintiff and Class Members to the extent that the warranties do not govern all of Plaintiff's and Class Members' claims or to the extent that there is any determination that Plaintiff and Class Members do not have standing to assert any contractual claims asserted against 23andMe or because of any alleged absence of contractual privity or otherwise.

88. Plaintiff and Class Members conferred a benefit on 23andMe, of which benefit 23andMe had knowledge. By its wrongful acts and omissions described herein, including the sale of the DNA Kits, 23andMe was unjustly enriched at the expense of Plaintiff and Class Members.

89. The detriment to Plaintiff and Class Members, and 23andMe's enrichment were related to and flowed from the wrongful conduct challenged in this Complaint.

90. It would be inequitable for 23andMe to retain the profits, personal DNA sequencing and genomic information, benefits, and other compensation obtained from its wrongful conduct as described herein in connection with selling the DNA Kits.

91. Plaintiff and Class Members seek restitution from 23andMe and an order of this Court proportionally disgorging all profits, personal DNA sequencing and genomic information, benefits, and other compensation obtained by 23andMe from its wrongful conduct and the establishment of a constructive trust from which Plaintiff and the Class Members may seek restitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and members of the Class request that the Court enter an order of judgment against 23andMe as follows:

1. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23(a), (b)(1), (b)(2), and (b)(3), and certifying the proposed class with costs of notice to the Class to be paid by 23andMe;

2. Designating Plaintiff as representative of the Class and her undersigned counsel as Class counsel;

3. Awarding Plaintiff and Class Members their individual damages, attorneys' fees, and costs, including interest thereon, and/or awarding restitution and equitable relief;

4. Entering an injunction ordering 23andMe to cease and desist from engaging in the unfair, unlawful, and/or fraudulent practices alleged in the Complaint;

5. Compelling 23andMe to establish a program to provide Plaintiff and Class Members refunds for their DNA Kits;

6. Awarding special damages according to proof on certain causes of action;

7. Awarding both pre- and post-judgment interest at the maximum allowable rate on any amounts awarded; and

8. Providing any and all such other and further relief that this Court may deem just and proper.

Dated: February 6, 2014

Respectfully submitted,

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JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS
TONI GUTHRIE

(b) County of Residence of First Listed Plaintiff Allegheny County, PA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Carlson Lynch LTD; PNC Park,
115 Federal Street, Suite 210, Pittsburgh, PA 15212
412.322.9243

DEFENDANTS
23ANDME, INC.

County of Residence of First Listed Defendant Santa Clara County, CA
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☒ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
28 U.S.C. 1332(d)
Brief description of cause:
Violation of Unfair Trade Practices and Consumer Protection law, Breach of Express and Implied Warranty

VII. REQUESTED IN COMPLAINT: ☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND $ CHECK YES only if demanded in complaint: JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY *(See instructions)*: JUDGE _____ DOCKET NUMBER _____

DATE 02/06/2014

SIGNATURE OF ATTORNEY OF RECORD s/ Carlos R. Diaz

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

JS 44AREVISED June, 2009
IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA
THIS CASE DESIGNATION SHEET MUST BE COMPLETED

PART A

This case belongs on the (○ Erie ○ Johnstown ◉ Pittsburgh) calendar.

1. **ERIE CALENDAR** - If cause of action arose in the counties of Crawford, Elk, Erie, Forest, McKean. Venang or Warren, OR any plaintiff or defendant resides in one of said counties.

2. **JOHNSTOWN CALENDAR** - If cause of action arose in the counties of Bedford, Blair, Cambria, Clearfield or Somerset OR any plaintiff or defendant resides in one of said counties.

3. Complete if on **ERIE CALENDAR**: I certify that the cause of action arose in_____ County and that the _____resides in_____County.

4. Complete if on **JOHNSTOWN CALENDAR**: I certify that the cause of action arose in _____County and that the_____resides in _____County.

PART B (You are to check ONE of the following)

1. ○ This case is related to Number_____. Short Caption_____
2. ◉ This case is not related to a pending or terminated case.

DEFINITIONS OF RELATED CASES:

CIVIL: Civil cases are deemed related when a case filed relates to property included in another suit or involves the same issues of fact or it grows out of the same transactions as another suit or involves the validity or infringement of a patent involved in another suit EMINENT DOMAIN: Cases in contiguous closely located groups and in common ownership groups which will lend themselves to consolidation for trial shall be deemed related. HABEAS CORPUS & CIVIL RIGHTS: All habeas corpus petitions filed by the same individual shall be deemed related. All pro se Civil Rights actions by the same individual shall be deemed related.

PARTC

I. CIVIL CATEGORY (Place x in only applicable category).

1. ○ Antitrust and Securities Act Cases
2. ○ Labor-Management Relations
3. ○ Habeas corpus
4. ○ Civil Rights
5. ○ Patent, Copyright, and Trademark
6. ○ Eminent Domain
7. ○ All other federal question cases
8. ○ All personal and property damage tort cases, including maritime, FELA, Jones Act, Motor vehicle, products liability, assault, defamation, malicious prosecution, and false arrest
9. ◉ Insurance indemnity, contract and other diversity cases.
10. ○ Government Collection Cases (shall include HEW Student Loans (Education), V A Overpayment, Overpayment of Social Security, Enlistment Overpayment (Army, Navy, etc.), HUD Loans, GAO Loans (Misc. Types), Mortgage Foreclosures, SBA Loans, Civil Penalties and Coal Mine Penalty and Reclamation Fees.)

I certify that to the best of my knowledge the entries on this Case Designation Sheet are true and correct

s/ Carlos R. Diaz

Date: 2/6/2014 _____

ATTORNEY AT LAW

NOTE: ALL SECTIONS OF BOTH FORMS MUST BE COMPLETED BEFORE CASE CAN BE PROCESSED.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Pennsylvania

TONI GUTHRIE

Plaintiff(s)

v.

23ANDME, INC.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* 23ANDME, INC.
1390 Shorebird Way
Mountain View, CA 94043

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Carlos R. Diaz
CARLSON LYNCH LTD
PNC Park
115 Federal Street, Suite 210
Pittsburgh, Pennsylvania 15212

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc: