

1 **BEFORE THE AMERICAN ARBITRATION ASSOCIATION**

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3 KAREN DAVIS-HUDSON and SARAH DIAZ,  
4 individually and on behalf of all others similarly  
5 situated,  
6  
7 Claimants,  
8  
9 v.  
10 23ANDME, INC.,  
11  
12 Respondent.

AAA CASE NO.: 74-20-1400-0032  
13 ~~PROPOSED~~ <sup>Ref</sup> ORDER GRANTING  
14 MOTION FOR PRELIMINARY  
15 APPROVAL OF CLASS ACTION  
16 SETTLEMENT AND DIRECTING  
17 DISSEMINATION OF CLASS  
18 NOTICE PROGRAM

19 This Motion having been brought before the Arbitrator by the Class Representatives through  
20 Class Counsel<sup>1</sup>, pursuant to Rule 8 of the American Arbitration Association Supplementary Rules  
21 for Class Arbitration (“Supplementary Rules”), for an Order granting preliminary approval of the  
22 Settlement Agreement with 23andMe, Inc. (“23andMe”), and directing the dissemination of class  
23 notice and appointing Settlement Class Counsel and the Settlement Administrator (the “Motion”);  
24 and the Arbitrator having reviewed the submissions of the parties, and having found that the parties  
25 are entitled to the relief they seek, and for good cause shown;

26 IT IS ORDERED that the Motion is GRANTED, and it is further ORDERED as follows:

- 27 1. The Arbitrator has jurisdiction over the subject matter of the Arbitration and over all  
28 Parties to this Settlement, including, without limitation, the Settlement Class (as defined below in  
paragraph 4), to enter this Order.
2. The Settlement Agreement submitted with the Motion is preliminarily approved as  
fair, reasonable and adequate. The Settlement Agreement was arrived at in good faith, following  
extensive arm’s-length negotiations by counsel for the Parties. The Arbitrator finds that the terms of  
Settlement Agreement fall within the range of possible approval sufficient to warrant sending notice  
thereof to the Settlement Class. This finding that the Settlement is reasonable is subject to a final  
determination to be made after a Fairness Hearing, as set forth below.

<sup>1</sup> Except as otherwise specified herein, all defined terms set forth in this Order shall have the same  
meaning as that set forth in the Settlement Agreement, and are incorporated herein.

1           3.       Based upon the submissions of the Parties, for purposes of the Settlement only, the  
2 Arbitrator finds as to the Settlement Class that: (a) the members of the Settlement Class are so  
3 numerous as to make joinder of them impracticable; (b) there are questions of law and fact common  
4 to the Settlement Class as to the reasonableness of the Settlement, and such questions predominate  
5 over any questions affecting only individual members of Settlement Class; (c) the Class  
6 Representatives' claims and the defenses asserted thereto are typical of the claims of members of the  
7 Settlement Class and the defenses asserted thereto; (d) the Class Representatives and Class Counsel  
8 have fairly and adequately protected the interests of members of the Settlement Class throughout this  
9 Arbitration; and (e) a class action is superior to all other available methods for fairly and efficiently  
10 resolving this Arbitration, considering: (i) the interests of the members of the Settlement Class in  
11 individually controlling the prosecution of separate actions; (ii) the extent and nature of the litigation  
12 concerning the controversy already commenced by members of the Settlement Class; (iii) the  
13 desirability and undesirability of concentrating the litigation of these claims in a particular forum;  
14 and (iv) the difficulties likely to be encountered in the management of a class action.

15           4.       Therefore, pursuant to Rules 4 and 5 of the Supplementary Rules for Class  
16 Arbitration, the Arbitrator conditionally certifies the Settlement Class, defined as "all persons  
17 residing in the United States of America who purchased for personal use a PGS Kit in the United  
18 States of America from 23andMe between October 16, 2007 and November 22, 2013 other than for  
19 purposes of resale or distribution or to provide to third parties for purposes of research or education.  
20 Excluded from the Settlement Class are (1) employees of 23andMe, including their current or former  
21 directors, officers and counsel; (2) any entity that has a controlling interest in 23andMe; (3)  
22 23andMe's affiliates and subsidiaries; and (4) the arbitrator to whom this case is assigned and any  
23 member of the arbitrator's immediate family."

24           5.       The Arbitrator preliminarily approves the Claimants listed in the Settlement  
25 Agreement as representatives of the Settlement Class ("Class Representatives").

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27           6.       Whatley Kallas, LLP and Podhurst Orseck, P.A. are appointed as Class Counsel.  
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7. A Fairness Hearing shall be held before the Arbitrator on November 15, 2017, at 9:00 a.m. at The Orrick Building, 405 Howard Street, San Francisco, California 94105, to determine (a) the merits of any valid and timely objection submitted by Settlement Class Members; (b) whether this action finally meets each of the prerequisites for class certification, and may properly be maintained as a class action for settlement purposes only on behalf of the Settlement Class; (c) whether the Settlement should receive final approval as fair, reasonable, adequate, and in the best interests of the Settlement Class; (d) whether the Settlement Approval Order and Final Award should be entered granting final approval of the Settlement, entering the Final Award and dismissing the claims asserted in the First Amended Demand for Class Action Arbitration in this Arbitration with prejudice as to 23andMe and the Released Parties, consistent with the terms provided for in the Settlement Agreement; (e) whether Settlement Class Members should be bound by the Releases set forth in the Settlement Agreement; (f) whether Settlement Class Members are barred by virtue of the terms of the Settlement Agreement from filing, commencing, prosecuting, intervening in, participating in (as class members or otherwise), organizing, or soliciting participation of other Settlement Class Members to pursue any action in any jurisdiction based on or relating to any of the Released Claims or the facts and circumstances relating thereto against any Released Party, and (g) whether the application of Class Counsel for the payment of attorneys' fees and reasonable litigation expenses, and payment of an additional award to Claimants are reasonable and should be approved. The Fairness Hearing may be postponed, adjourned or continued by further order of the Arbitrator, without further notice to the Settlement Class.

8. At the Fairness Hearing, the Arbitrator will consider any timely and valid objections presented by Settlement Class Members and the Parties' responses to any such objections.

9. Any Person included within the Settlement Class who wishes to be excluded from membership in the Settlement Class must do so in writing by mailing a request for exclusion from the Settlement Class to the Administrator, postmarked no later than October 20, 2017. To be effective, the request for exclusion (or opt-out request) must: (a) include the case name and number, (b) include the Person's full name and current mailing address; (c) identify the number of PGS's

1 purchased and the appropriate dates of purchase, (d) contain a statement that the Person is a member  
2 of the Settlement Class, (e) include a statement clearly indicating the Person's intent to be excluded  
3 from the Settlement Class; and (f) be signed by the Person submitting the request for exclusion.  
4 Requests for exclusion must be submitted individually, and not on behalf of more than one member  
5 of the Settlement Class. No member of the Settlement Class shall have the right or may exclude  
6 themselves from the Settlement Class as a class or group of persons, in a representative capacity on  
7 behalf of a class or group of persons, or on behalf of any other member of the Settlement Class. Any  
8 request for exclusion that fails to satisfy the requirements of this paragraph or that is not properly  
9 and timely submitted, as required above, shall be ineffective and void absent further Order or  
10 agreement. Such member of the Settlement Class shall be deemed to have waived all rights to opt  
11 out of the Settlement Class, and shall be deemed a Class Member for all purposes pursuant to this  
12 Order.

13           10. If a timely and valid request for exclusion is made by a member of the settlement  
14 Class, then that Person will not be a Settlement Class Member, will not be entitled to participate in  
15 the settlement, cannot object to the settlement, and will not be bound by the settlement and/or any  
16 determinations and/or awards concerning the Settlement Agreement.

17           11. Any member of the Settlement Class who does not request exclusion from the  
18 Settlement Class may object to the fairness, reasonableness or adequacy of the proposed Settlement.  
19 Any such objection must be filed with the American Arbitration Association, at the address listed  
20 below, and must be submitted to the Arbitrator and either emailed or postmarked by no later than  
21 October 20, 2017:

22                                   American Arbitration Association  
23                                   950 Warren Avenue  
24                                   East Providence, RI 02914  
25                                   Re: *Davis-Hudson v. 23andMe, Inc.*  
26                                   Robert L. Brent, Arbitrator

27 In order to be a valid objection, the Class Member must timely submit the objection to the Arbitrator,  
28 and the objection must include: (a) the case name and number, (b) the objector's full name and  
current email and U.S. mail address, (c) a statement that the objector is a Class Member, (d) a

1 statement in writing of all objections and the reasons therefor, and include all supporting papers,  
2 including, without limitation, briefs, written evidence, and declarations and an agreement to be  
3 subject to discovery, and (e) a statement whether the objector intends to appear at the Fairness  
4 Hearing, through counsel or otherwise. Objections must be submitted individually and not on behalf  
5 of more than one Class Member. No Class Member may file objections as a class or group of persons,  
6 in a representative capacity on behalf of a class or group of persons, or on behalf of any other Class  
7 Member.

8           12. Settlement Class Members who timely submit valid written objections in accordance  
9 with the requirements of Paragraph 11 of this Order may, but need not, appear and be heard at the  
10 Fairness Hearing regarding any objections so submitted, in person or by counsel, but must include  
11 in their written objections a statement of their intent to appear at the Fairness Hearing and identify  
12 all evidence and witnesses that they may offer at the Fairness Hearing.

13           13. Any Settlement Class Member that does not properly and timely submit an objection  
14 to the Settlement in accordance with the provisions of this Order will be considered to have waived  
15 any such objection, shall not be permitted to object to the Settlement at the Fairness Hearing, shall  
16 be foreclosed from seeking any review of the Settlement or its terms by appeal or otherwise, and  
17 shall be bound by the final determination of the Arbitrator.

18           14. The Arbitrator finds that the manner and content of the settlement notice program  
19 specified in the Settlement Agreement and as described in the Motion and in the form submitted to  
20 the Arbitrator will provide the best notice practicable to the Settlement Class under the circumstances  
21 to apprise members of the Settlement Class of the pendency of this Arbitration, the terms of the  
22 settlement, and their right to participate in, object to, or exclude themselves from the settlement. The  
23 Arbitrator further finds that the full Notice, the summary Notice, the manner of disseminating the  
24 notices, and the settlement website program as set forth in Section 6 and Exhibits "2" and "3" of the  
25 Settlement Agreement are reasonable, constitute due, adequate and sufficient notice to all persons  
26 entitled to receive notice, and meet the requirements of due process. The Arbitrator hereby directs  
27 that notice be given pursuant to the terms set forth in the Settlement Agreement, provided that the  
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1 Parties, by agreement, may revise the notices and Election Form in ways that are not material, or in  
2 ways that are appropriate to update those documents for purposes of accuracy. All costs incurred in  
3 connection with the preparation and dissemination of any notices to the Settlement Class and the  
4 costs of administering this settlement shall be paid by 23andMe directly to the Administrator, subject  
5 to the provisions of the Settlement Agreement.

6 15. If the Settlement is finally approved, the Arbitrator shall enter a separate order and  
7 award finally approving the Settlement, entering judgment and dismissing the claims asserted in the  
8 First Amended Demand for Class Arbitration with prejudice against the Released Parties consistent  
9 with the terms of the Settlement Agreement. Such order and judgment shall be fully binding with  
10 respect to the Plaintiffs, all Settlement Class Members, and the Released Parties.

11 16. In the event that the proposed Settlement provided for in the Settlement Agreement  
12 is not approved by the Arbitrator, or the Effective Date does not occur for any reason, then the  
13 Settlement Agreement, all drafts, negotiations, discussions, and documentation relating thereto, and  
14 all orders entered by the Arbitrator in connection therewith shall become null and void and  
15 automatically vacated and all monies (except for incurred settlement notice and administrative costs)  
16 returned to 23andMe by the Administrator pursuant to the terms of the Settlement Agreement. In  
17 such event, the Settlement Agreement and all negotiations and proceedings relating thereto shall be  
18 withdrawn without prejudice to the rights of the Parties, who shall be restored to their respective  
19 positions as of the date of the execution of the Settlement Agreement.

20 17. The Arbitrator hereby appoints Kurtzman Carson Consultants LLC (“KCC”) as the  
21 Administrator to perform the duties of the Administrator as set forth and in accordance with the  
22 Settlement Agreement and all Exhibits thereto, in accordance with the schedule set forth in this  
23 Order. The dates of performance are as follows:

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1	Activation of Settlement Website by Settlement Administrator	Date: September 15, 2017
2	Commencement of Dissemination of Summary Notice	Date: September 15, 2017
3	Settlement Administrator to provide Arbitrator with Declaration confirming notice was provided in accordance with terms of Settlement Agreement	Date: October 9, 2017
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6           18.     The deadline for any Election request for the Cash Compensation to be postmarked  
7 or submitted online or by email or facsimile shall be December 6, 2017. Unless the Arbitrator orders  
8 otherwise, such Election requests must be submitted in conformance with the Settlement Agreement  
9 and shall be processed in accordance with the procedures set forth in the Settlement Agreement.

10           19.     The Parties shall submit and serve papers in support of final approval of the  
11 Settlement, including any request for payment of attorneys' fees, costs and reasonable litigation  
12 expenses, and incentive awards to Claimants, by October 9, 2017.

13           20.     Any reply in support of such motions and requests, and any responses to any  
14 objections submitted, shall be submitted and served by November 3, 2017.

15 DATED: August 16, 2017

16 Robert L. Brent  
17 HON. ROBERT L. BRENT  
18 ARBITRATOR

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