

STIPULATION AND AGREEMENT OF SETTLEMENT AND RELEASE

THIS STIPULATION AND AGREEMENT OF SETTLEMENT AND RELEASE (the “Settlement Agreement”) is made by and between the named Claimants proposed as Class and Settlement Class Representatives (collectively, “Claimants” or “Class Representatives”) in the arbitration captioned *Davis-Hudson, et al. v. 23andMe, Inc.*, AAA Case No. 74-20-1400-0032, on the one hand, and 23andMe, Inc. (“23andMe”) and its subsidiaries and affiliates on the other hand (collectively “Respondent”).

RECITALS

1. On November 22, 2013, the U.S. Food and Drug Administration (“FDA”) sent 23andMe a letter (the “Warning Letter”) that directed the Company to discontinue marketing the health information component of the Company’s Personal Genome Service (“PGS”).

2. On January 13, 2014, the putative class action arbitration captioned *Davis-Hudson, et al. v. 23andMe, Inc.* was submitted to the American Arbitration Association and assigned Case No. 74-20-1400-0032 (the “Arbitration”).

3. The claims asserted in the Arbitration arose out of the Warning Letter and concerned 23andMe’s PGS. Claimants allege in the Arbitration that the PGS was sold to consumers based on inaccurate or misleading information regarding the PGS specifications and capabilities, and was not sold in compliance with applicable federal and state laws. Respondent denies, and continues to deny, all such allegations.

4. On February 18, 2016, Claimants filed a First Amended Demand for Class Arbitration (“Demand”). The Demand alleges the following claims for relief:

- (1) *Cal. Bus. & Prof. Code § 17200, et seq. – Unlawful Business Acts and Practices;*

- (2) *Cal. Bus. & Prof. Code § 17200, et seq. – Unfair Business Acts and Practices;*
- (3) *Cal. Bus. & Prof. Code § 17200, et seq. – Fraudulent Business Acts and Practices;*
- (4) *Misleading or Deceptive Advertising – Business and Professions Code § 17500, et seq.;*
- (5) *Breach of the Implied Warranty of Merchantability – California Commercial Code § 2314;*
- (6) *Breach of the Implied Warranty of Fitness for a Particular Purpose - California Commercial Code § 2315;*
- (7) *Violation of California Civil Code § 1750, et seq.;*
- (8) *Negligent Misrepresentation; and*
- (9) *Unjust Enrichment*

5. Between November 27, 2013 and March 28, 2014, 23andMe was named as a defendant in nine consumer class action lawsuits filed in or transferred to the U.S. District Court for the Northern District Court of California,¹ and that were consolidated under the caption *Tompkins v. 23andMe, Inc.*, Case No. 5:13-cv-05682-LHK (N.D. Cal.) (the “Consolidated Federal Actions”). The Consolidated Federal Actions arose out of the same facts and circumstances as the Arbitration, and asserted claims against 23andMe that were substantially similar to those asserted in the Arbitration. On June 25, 2014, the federal district court granted 23andMe’s motion to compel arbitration, and dismissed the Consolidated Federal Actions without prejudice. That ruling was affirmed on appeal on August 23, 2016.

¹ Those actions include *Tompkins v. 23andMe, Inc.*, Case No. 5:13-cv-05682-LHK (N.D. Cal.), *Martin v. 23andMe, Inc.*, Case No. 5:14-cv-00429-LHK (N.D. Cal.), *Aeron v. 23andMe, Inc.*, Case No. 5:14-cv-01167-LHK (N.D. Cal.), *Stanton v. 23andMe, Inc.*, 5:14-cv-00294-LHK (N.D. Cal.), *Dilger v. 23andMe, Inc.*, Case No. 5:14-cv-01191-LHK (N.D. Cal.), *Stefani v. 23andMe, Inc.*, 5:14-cv-02414-LHK (N.D. Cal.), *Guthrie v. 23andMe, Inc.*, Case No. 5:14-cv-01258-LHK (N.D. Cal.), *Spreter v. 23andMe, Inc.*, 5:14-cv-01455-LHK (N.D. Cal.), *Newland v. 23andMe, Inc.*, 5:14-cv-01348-LHK (N.D. Cal.).

6. Between December 26, 2013 and March 14, 2017, three more, related putative class action arbitrations were submitted to the AAA, captioned *Livingston v. 23andMe, Inc.*, AAA Case No. 11-20-1300-1662, *Jenks v. 23andMe, Inc.*, AAA Case No. 74-20-1400-0107, and *Patel v. 23andMe, Inc.*, AAA Case No. 01-17-0001-5253 (collectively, the “Related Arbitrations”). The Related Arbitrations arose out of the same facts and circumstances as the Arbitration, and asserted claims against 23andMe that were substantially similar to those asserted in the Arbitration.

7. Claimants to the Arbitration, through their counsel, have conducted extensive research, discovery and investigation during the prosecution of the Arbitration, including, without limitation, review of technical materials and promotional materials submitted by both 23andMe and third parties, retention and consultation with industry consultants on the value of the data generated by 23andMe from individuals who completed the PGS testing, review and analysis of pricing data, consumer complaints and reviews, reviews of 23andMe’s insurance policies and litigation over the scope of coverage provided by such policies, reviews of publicly available investor presentations and financial filings, press releases and public statements about 23andMe’s interactions with the FDA and the Warning Letter directing 23andMe to halt marketing and sales of the health component of the PGS.

8. Counsel for Claimants and counsel for Respondent have engaged in substantial arm’s-length negotiations in an effort to resolve the Arbitration over a period of more than 16 months, including conducting numerous telephone conferences, direct meetings with 23andMe representatives and their counsel, a face-to-face mediation session before David Geronemus on January 26, 2016, and a face to face mediation session before the Honorable Carl West (ret.) with subsequent follow-on negotiations after those mediations during which the terms of an

agreement were extensively debated and negotiated.

9. Respondent denies all claims, charges and allegations asserted against it, and disclaims any wrongdoing or liability whatsoever. Respondent argues that it caused no actionable injury through any misrepresentation or breach of warranty of any kind to Claimants or other members of the Settlement Class regarding the PGS, and that the PGS was sold in compliance with all applicable laws.

10. Respondent has agreed to the compromise and settlement of the Arbitration subject to the terms and conditions set forth herein to avoid the substantial burden, expense, management distraction and uncertainties that would be involved in protracted litigation, and to terminate the Released Claims against Respondent.

11. Claimants have agreed to settle their claims and those of the Settlement Class upon the terms and provisions set forth herein and as a result of extensive investigation and thorough research of the law applicable to the claims underlying the Arbitration, after balancing the benefits that Claimants and the Settlement Class will receive from the Settlement against the uncertain outcome, risks, difficulties, and delays of litigation, in general, and in complex actions such as this Arbitration, in particular, and after concluding that the Settlement is in the best interests of the Settlement Class.

12. The Parties and their counsel believe that the terms and conditions of this Settlement Agreement are fair, reasonable, and adequate to the Settlement Class and the Parties.

NOW, THEREFORE, in consideration of the recitals, agreements and covenants set forth herein, subject to approval by the Arbitrator and intending to be legally bound, Claimants, on behalf of themselves and the Settlement Class, and Respondent, on behalf of the Released Parties (collectively, the "Parties"), hereby STIPULATE AND AGREE to compromise and

resolve the Arbitration on the following terms and conditions:

TERMS

1. Additional Definitions

1.1 “Administrator” means Kurtzman Carson Consultants, LLC (“KCC”), which shall serve as the settlement administrator for the settlement and perform the settlement administration duties as set forth herein.

1.2 “Arbitrator” means Robert L. Brent of the American Arbitration Association.

1.3 “Cash Compensation” shall mean \$12.50 per PGS purchase for which a valid and timely Election is submitted, as set forth in Section 2.7 of this Settlement Agreement.

1.4 “Certificate Compensation” or “Certificate” shall mean a printed out certificate, code or other unique identifier in the amount of \$40.00 that can be used to offset the cost of purchasing a Genetic Testing Kit from the 23andMe website. The Certificate shall be subject to the terms and conditions set forth in Exhibit 1 hereto. The payment of the Cash Compensation and provision of the Certificate Compensation shall be the means through which members of Settlement Class are entitled to receive compensatory damages pursuant to the Final Award in this matter.

1.5 “Claimants’ Counsel” means Whatley Kallas, LLP, Podhurst Orseck, P.A., and McFerrin Law Firm, LLC.

1.6 “Claims Administration” means the process by which this Settlement Agreement is administered pursuant to the terms of this Settlement Agreement.

1.7 “Class Counsel” means Whatley Kallas, LLP and Podhurst Orseck, P.A.

1.8 “Class Notice” or “Notice” means the Arbitrator-approved notice of the Settlement and related matters provided to the Settlement Class, substantially in the form of

Exhibits 2 (the full notice of class action settlement) and 3 (the summary notice of class action settlement) attached hereto.

1.9 “Class Period” means the period between October 16, 2007 and November 22, 2013.

1.10 “Closing Date” means the last date of the Election Period on which an Election must be postmarked if sent by U.S. mail, or 11:59 p.m. Pacific Time on the date set by the Arbitrator, if sent by any other means, including email or facsimile, for a Settlement Class Member to be entitled to either the Cash Compensation or Certificate Compensation contemplated in this Settlement Agreement.

1.11 “Effective” means the date on which all conditions precedent described in Section 12 below have been satisfied.

1.12 “Effective Date” means the date upon which this Settlement Agreement becomes Effective as described in Section 12 below.

1.13 “Election” means the Arbitrator-approved form for electing either the Cash Compensation or Certificate Compensation provided for in Section 2.7 of this Settlement Agreement.

1.14 “Election Period” means the period to elect the compensation to accept, which will end on a date to be set in the Preliminary Approval Order.

1.15 “Final Award” means the final award by which the Arbitrator finally approves this Settlement Agreement, effectuates dismissal of the claims in the Demand, approves payment of attorneys’ fees, expenses, and compensation to Claimants, and makes such other final rulings as are contemplated by this Settlement Agreement, substantially in the form of Exhibit 5.

1.16 “Fund” shall be the non-interest bearing escrow account to be established by the Administrator for distribution of the Cash Compensation pursuant to the terms of the Settlement Agreement.

1.17 “Objection Date” means the final date on which members of the Settlement Class may file and serve objections to this Settlement Agreement.

1.18 “Opt-Out Date” means the final date on which an opt-out notice must be received by the Administrator for a putative Settlement Class Member to elect to be excluded from this Settlement Agreement and the Settlement Class.

1.19 “Released Claims” means and includes all claims that were or could have been asserted in the Arbitration, the Consolidated Federal Actions or the Related Arbitrations, to the extent they arise out of or relate to in any way to the Warning Letter, marketing, advertising, promotion or the sale of the PGS.

1.20 “Released Persons” means and includes:

(1) 23andMe, and their present or past parent corporations, subsidiaries, divisions, affiliates, partners, directors, officers, employees, agents and insurers, and each of their respective predecessors, heirs, executors, administrators, successors and assigns;

1.21 “Releasing Persons” means and includes Claimants, members of the Settlement Class who have not validly requested exclusion from the Settlement Class pursuant to Section 9 below, Claimants’ Counsel and each of their respective predecessors, heirs, executors, administrators, successors, and assigns in their capacities as such.

1.22 “Settlement” means the settlement embodied and contemplated by this Settlement Agreement.

1.23 “Settlement Class” means all persons and entities resident in the United States of

America who purchased for personal use the PGS in the United States of America from the Respondent during the Class Period other than for purposes of resale, distribution or to provide to third parties for purposes of research or education. Excluded from the Settlement Class are (1) employees of Respondent, including its current or former directors, officers and counsel; (2) any entity that has a controlling interest in Respondent; (3) Respondent's affiliates and subsidiaries; and (4) the Arbitrator to whom this case is assigned and any member of the Arbitrator's immediate family.

1.24 "Unit" is one unit of the PGS.

2. The Settlement

The following settlement terms in paragraphs 2(a)-(c) will be implemented upon the Effective Date, unless the Parties otherwise agree:

a. Election of Cash Compensation.

2.1 Subject to a determination of eligibility as set forth herein, members of the Settlement Class who purchased the PGS during the Class Period are entitled to elect and receive the Cash Compensation. If a member of the Settlement Class makes no so election, they will receive the Certificate Compensation. Members of the Settlement Class may receive either the Cash Compensation or the Certificate Compensation, but not both, from the Administrator, for each Unit purchased during the Class Period. Members of the Settlement Class shall be entitled to make an Election for the Cash Compensation for each Unit for which a timely Election is submitted.

b. Distribution of the Cash Compensation

2.2 The Administrator shall have sole and exclusive responsibility for determining the eligibility of members of the Settlement Class for the Cash Compensation.

2.3 The Administrator shall make determinations regarding the eligibility of

Settlement Class Members for the Cash Compensation in accordance with the following procedures:

(1) Upon receipt of an Election for the Cash Compensation from a member of the Settlement Class, the Administrator shall promptly determine whether the Settlement Class Member is eligible for the Cash Compensation.

(2) If the information received by the Administrator within the Election Period is complete and indicates that the member of the Settlement Class is eligible for the Cash Compensation, then after the conclusion of the Election Period, and within 30 days of the Effective Date unless the Parties otherwise agree, and as set forth below, the Administrator shall disburse payment from the Fund to the Settlement Class Member in the amount approved by the Administrator.

(3) If the documents or information received by the Administrator indicate that the member of the Settlement Class is not eligible for the Cash Compensation, or are received after the expiration of the Election Period, the Administrator shall notify the member of the Settlement Class that he, she or it is not eligible for the Cash Compensation.

2.4 The Administrator shall advise 23andMe of the amounts to contribute to the Fund based on the amount of Elections received within 15 days after the Closing Date. 23andMe shall deposit such amounts with the Administrator within 30 days of receipt of the notification from the Administrator of the amounts to be paid. The Fund will be fully funded by no later than 30 days after the Effective Date.

2.5 All valid and timely Elections for the Cash Compensation shall be paid within 30 days of the Effective Date.

2.6 No funds held in the Fund shall be distributed to members of the Settlement

Class except in accordance with the terms of this Settlement Agreement or with the written agreement of counsel for 23andMe and Class Counsel. All funds held in the Fund shall remain subject to the jurisdiction of the Arbitrator until such time as the funds are distributed pursuant to the terms of this Settlement Agreement.

c. Distribution of the Certificate Compensation

2.7 The Administrator shall have sole and exclusive responsibility for determining the eligibility of members of the Settlement Class for the Certificate Compensation.

2.8 The Administrator shall make determinations regarding the eligibility of Settlement Class Members for the Certificate Compensation in accordance with the following procedures:

(1) Within fifteen (15) days of the Closing Date, the Administrator shall determine whether the Settlement Class Member is eligible for the Certificate Compensation, including based on whether the member of the Settlement Class has previously made an Election for the Cash Compensation.

(2) If the information received by the Administrator within the Election Period is complete and indicates that the member of the Settlement Class is eligible for the Certificate Compensation, then, as set forth below, the Administrator shall disburse the Certificate Compensation to the Settlement Class Member who did not timely and validly elect the Cash Compensation in the quantities approved by the Administrator.

2.9 All Certificate Compensation shall be distributed no later than 30 days after the Effective Date, unless the Parties otherwise agree to a later date in writing.

2.10 The terms and conditions of the Certificate shall be as described in Exhibit 1 hereto.

2.11 All Settlement Class Members eligible to receive the Certificate Compensation shall be entitled to utilize or transfer the Certificate upon receipt of the Certificate from the Administrator. Class Members shall not be permitted to sell or barter the Certificate.

2.12 The total aggregate value of the Certificates distributed to Settlement Class Members shall be considered as a portion of the overall consideration being provided Settlement Class Members under the terms of this Settlement.

3. Releases

3.1 The obligations incurred pursuant to this Settlement Agreement shall be in full and final disposition of the Arbitration and any and all Released Claims as against all Released Persons, to the maximum extent permitted by law.

3.2 Upon the Effective Date, Claimants, including all members of the Settlement Class who have not validly opted out of the Settlement Agreement pursuant to Section 9 below, on behalf of themselves, their heirs, executors, administrators, successors and assigns, and any person they represent, shall, to the maximum extent permitted by law, have released and forever discharged, and shall forever be enjoined from prosecution of, each and every Released Claim against any of the Released Persons, whether or not such Claimant executes and delivers a Claim Form. By releasing and forever discharging all Released Claims, whether known or unknown, against the Released Persons, Claimants, including all members of the Settlement Class who have not validly opted out of the Settlement pursuant to Section 9 below, expressly, by operation of the Final Award, waive any and all provisions, rights and benefits conferred by California Civil Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF

KNOWN BY HIM OR HER MUST HAVE MATERIALLY
AFFECTED HIS OR HER SETTLEMENT WITH THE
DEBTOR,

and any other law of any applicable jurisdiction, or principle of common law, which is similar, comparable, or equivalent to said provision.

3.3 Upon the Effective Date, each of the Released Persons shall be deemed to have, and by operation of the Final Award shall have, fully, finally, and forever released, relinquished and discharged Claimants, including all members of the Settlement Class who have not validly opted out of the Settlement pursuant to Section 9 below, and Claimants' Counsel for all claims relating to or arising out of or connected with the institution, prosecution, assertion, settlement or resolution of the Arbitration and/or the Released Claims. By releasing and forever discharging all such claims, whether known or unknown, the Released Persons expressly, by operation of the Final Award, waive any and all provisions, rights and benefits conferred by California Civil Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
WHICH THE CREDITOR DOES NOT KNOW OR
SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE
TIME OF EXECUTING THE RELEASE, WHICH IF
KNOWN BY HIM OR HER MUST HAVE MATERIALLY
AFFECTED HIS OR HER SETTLEMENT WITH THE
DEBTOR,

and any other law of any jurisdiction (domestic or foreign), or principle of common law, which is similar, comparable, or equivalent to said provision.

4. Administrator

4.1 Subject to Arbitrator approval, KCC shall serve as the Administrator, and shall be responsible for disseminating the Notice and for Claims Administration, including the activities referred to in Sections 2, 6, 8 and 12.5 with respect to the Settlement Agreement. Promptly upon execution of this Settlement Agreement, the Administrator shall establish a settlement website

(the “Settlement Website”), a settlement U.S. mail address (the “Settlement Mail Address”), and designate a settlement telephone number (the “Settlement Telephone Number”) for purposes of facilitating communication with members of the Settlement Class and the submission of Claim Forms.

4.2 23andMe shall pay the cost of providing notice to the Settlement Class and all other obligations of the Arbitrator performed in accordance with the provisions of this Settlement Agreement and the Arbitrator’s Preliminary Approval Order as described in Section 7. The Administrator shall invoice 23andMe for the amounts to be paid the Administrator for services rendered under this Settlement Agreement, which shall be paid under the terms of a separate agreement to be reached between the Parties and the Administrator.

5. Certification of Settlement Class

5.1 For purposes of settlement only, the Parties agree that, subject to Arbitrator approval, the Settlement Class should be conditionally certified and that Claimants be appointed as the representatives of the Settlement Class, and Class Counsel appointed as counsel for the Settlement Class.

5.2 If this Settlement Agreement is terminated pursuant to its terms, or for any reason the Settlement fails to become Effective, any and all orders certifying the Settlement Class, whether in the form of preliminary findings or final findings, shall be vacated and of no force or effect. The stipulations and agreements contained in the Settlement Agreement shall be null and void, and may not be referred to or used as evidence or for purposes of class certification, or any other purpose.

6. Notice

The parties agree to, and will request the Arbitrator to approve, notice to the Settlement

Class as follows:

6.1 A copy of the full Notice and Summary Notice of Settlement substantially in the form of Exhibits 2 and 3 shall be posted on the Settlement Website, together with the Settlement Email Address and Settlement Telephone Number.

6.2 23andMe will provide a link to the Settlement Website on the homepage of its website, 23andMe.com.

6.3 Members of the Settlement Class for whom contact information is made available to the Administrator by 23andMe shall receive direct notice from the Administrator in the form of the Summary Notice substantially in the form of Exhibit 3, either:

- (a) By email to be followed by U.S. Mail in the event that email notice is unsuccessful or bounced back; or
- (b) By U.S. Mail where there is no available email address in 23andMe's records provided to the Administrator.

Such direct notice shall be included in an original E-mail notice and two follow on notices, the form and timing of which shall be agreed to between the Parties and approved by the Arbitrator.

6.4 Subject to the approval of the Arbitrator, the Administrator shall provide the Notice described in Sections 6.1-6.2 above in accordance with the timing set forth in the Preliminary Approval Order.

6.5 In addition to the Notice and Summary Notice provided by the Administrator as set forth in Sections 6.1-6.3 above, the Settlement Website shall permit members of the Settlement Class who elect to do so to register online to receive email notice that the Arbitrator has granted Final Approval of the settlement and updates on the deadlines to submit Claim Forms and the status of payments under the terms of the Settlement.

7. Preliminary Approval Order

7.1 As soon as practicable after execution of this Settlement Agreement, the Parties shall jointly apply to the Arbitrator for entry of a Preliminary Approval Order substantially in the form of Exhibit 4:

(1) Preliminarily approving the Settlement as fair, reasonable, and adequate;

(2) Conditionally certifying the Settlement Class for settlement purposes only and setting the date of the Final Approval Hearing and the dates for submitting papers to the Arbitrator and other relevant deadlines;

(3) Approving the appointment of the Administrator;

(4) Approving the full Notice and Summary Notice of Settlement;

(5) Directing the Administrator to provide notice in the manner described in Section 6;

(6) Setting the Election Period;

(7) Requiring any member of the Settlement Class who requests exclusion from the Settlement Class to submit to the Administrator a “Request for Exclusion from the Settlement Class” within thirty (30) days from the completion date of the Notice program and in such manner and containing such information as required by the Notice; and

(8) Requiring any member of the Settlement Class who objects to the approval of this Settlement Agreement to file and serve no later than thirty (30) days before the Final Approval Hearing and in the manner provided in the Notice, notice of that member’s intention to appear and object, the detailed description of the grounds for that objection, and all papers he, she or it intends to present to the Arbitrator in opposition to this Settlement Agreement and agreeing to be subject to discovery, and providing that any member of the Settlement Class who

does not follow the objection procedure in the Notice will be barred from making an objection or participating in the Final Approval Hearing.

8. Settlement Administration

8.1 Counsel for the Parties shall promptly retain the Administrator and assist in preparing the Administrator to perform the tasks specified in this Agreement. Respondent shall provide any contact information they possess from any member of the Settlement Class to the Administrator within twenty-one (21) days of the execution of the Settlement Agreement.

8.2 Within fifteen (15) days of either the entry of the Preliminary Approval Order or when the Administrator receives the identification information for members of the Settlement Class as set forth in Section 8.1, whichever is later, the Administrator shall complete providing the initial Notice in the manner described in Section 6.2(a) and (b) above.

8.3 For purposes of determining the extent, if any, to which a Settlement Class Member will be entitled to participate in the Settlement, the following provisions shall apply:

(1) Each member who submits an Election to receive the Cash Compensation shall, within the Election Period, submit to the Administrator notification of their Election.

(2) The Election will be deemed submitted to the Administrator on the date postmarked if sent by U.S. Mail, or if received by 11:59 p.m. Pacific Time on the Closing Date if submitted by any other means, including email or facsimile.

(3) All determinations as to the validity and timeliness of an Election, a member's right to receive the Certificate or Cash Compensation, and other duties of a similar nature to be performed in connection with the administration of this Settlement Agreement, shall be performed by the Administrator.

8.4 Except as otherwise ordered by the Arbitrator, all Settlement Class Members who fail to timely submit an Election for the Cash Compensation within the Election Period shall

receive the Certificate after the Effective Date and will be forever barred from receiving any other form of payment or consideration pursuant to this Settlement Agreement other than as provided herein, but will in all other respects be subject to and bound by the provisions of this Settlement Agreement, the releases contained herein, and the Final Award.

8.5 No Person shall have any claim against Claimants, Class Counsel, Claimants' Counsel, the Administrator, or any other Person designated by Class Counsel, the Administrator or the Arbitrator, Respondent or their counsel or the Released Persons, based on the administration of and processing and payment of claims consistent with the terms of this Settlement Agreement.

8.6 Respondent and its counsel shall have no responsibility for, interest in, or liability whatsoever with respect to:

(1) any act, omission or determination of Class Counsel, Claimants' Counsel or the Administrator in connection with the administration of this Settlement; or

(2) the determination, administration, calculation, or payment of any Certificate Compensation or Cash Compensation.

9. Opt-Out Rights

9.1 Putative members of the Settlement Class have the right to request exclusion from this Settlement Agreement. Any Settlement Class Member who does not timely and validly request exclusion shall be a member of the Settlement Class and shall be bound by the terms of this Settlement Agreement and Final Award. Any member of the Settlement Class who timely and validly requests exclusion from the Settlement Class shall be excluded from this Settlement Agreement and from the Settlement Class.

9.2 The Notice shall describe the procedure whereby members of the Settlement

Class may exclude themselves from the Settlement Class, which shall, at a minimum, provide that any such requests must (i) be made in writing; (ii) include the Settlement Class Member's name, current address, email address and telephone number and (iii) a statement that the Settlement Class Member wants to be excluded from the Settlement Class.

10. Final Award

10.1 Upon approval by the Arbitrator of this Settlement Agreement, the Final Award shall be entered substantially in the form of Exhibit 5:

(1) approving this Settlement Agreement and adjudging its terms to be fair, reasonable and adequate, directing consummation of the terms and provisions of this Settlement Agreement, and retaining jurisdiction to effectuate the same;

(2) effectuating the immediate dismissal with prejudice of all claims in the Demand other than (5) Breach of the Implied Warranty of Merchantability and (6) Breach of the Implied Warranty of Fitness for a Particular Purpose;

(3) effectuating the dismissal with prejudice of the Demand's claims for (5) Breach of the Implied Warranty of Merchantability and (6) Breach of the Implied Warranty of Fitness for a Particular Purpose immediately upon the payment of all valid and timely claims for the Certificate Compensation and Cash Compensation has occurred;

(4) completely discharging, settling, dismissing with prejudice, releasing, and permanently barring and enjoining the assertion, prosecution, or continuation by Settlement Class Members of any Released Claim, whether known or unknown, against each and every Released Person; provided, however, that the Final Award shall not bar any action or claim to enforce the terms of this Settlement Agreement as approved by the Arbitrator or the Final Award; and

(5) fully, finally, and forever releasing, relinquishing and discharging Claimants, each and all of the Settlement Class Members, and the Class Counsel and Claimants' Counsel from all claims by the Released Persons relating to or arising out of or connected with the institution, prosecution, assertion, settlement or resolution of the Arbitration, and/or the Released Claims.

10.2 The Parties shall file a joint Petition to Confirm Arbitration Award within 14 days upon issuance of the Final Award with the Santa Clara County Superior Court, and shall request the court promptly enter an order confirming the Final Award.

11. Attorneys' Fees and Costs and Payments to Class Representatives

11.1 After an agreement was reached among the Parties as to all principal terms and conditions of this Settlement Agreement, the Parties entered into arm's-length discussions regarding the amount of attorneys' fees, costs and expenses to be paid to Claimants' Counsel, including extensive discussions through and with the assistance of a third-party mediator, the Honorable Carl J. West (ret.). Subject to the approval of the Arbitrator, Class Counsel shall apply for payment of attorneys' fees and reimbursement of costs and expenses to Claimants' Counsel, either in an amount to be agreed to between the Parties or, if Agreement has not been reached by the time any papers for entry of the Final Award are due, in any amount approved by the Arbitrator. Such amount is to be paid by 23andMe consistent with the decision of the Arbitrator. This Settlement, however, is not in any way conditioned on the Arbitrator awarding such amount, or any particular amount, of attorneys' fees and expenses.

11.2 In no event shall 23andMe be obligated to pay Claimants' Counsels' attorneys' fees, costs, disbursements, or expenses, or Claimants' costs or expenses, in an amount greater than the amount agreed to between the Parties or as awarded by the Arbitrator.

11.3 23andMe and Class Counsel have agreed any attorneys' fees and costs approved by the Arbitrator shall be payable to Class Counsel within 14 days following the granting of final approval of the Settlement by the Arbitrator and entry of the Final Award, subject to reimbursement by the recipients in the event this Settlement for any reason fails to become Effective. In the event that the Final Award is vacated, reversed or modified on appeal or this Settlement for any reason fails to become Effective as that term is defined under the terms of the Settlement Agreement and the Parties elect to not go forward with the Settlement, Class Counsel shall refund to 23andMe the attorneys' fees, costs and expenses paid to Class Counsel by 23andMe consistent with such reversal or modification as to the amounts allocated between them. The attorneys' fees shall be payable by wire transfer, and Class Counsel shall furnish the Administrator with the necessary wire transfer information. Class Counsel shall allocate and pay such amounts among Claimants' Counsel as they deem appropriate based upon their relative contributions to the overall prosecution and resolution of the Arbitration.

11.4 Class Counsel shall separately apply to the Arbitrator for time and expense reimbursements for the two Class Representatives named in the Demand, not to exceed \$10,000 per person, with such amounts to payable by 23andMe to such persons in the amount as awarded by the Arbitrator upon the Settlement Agreement becoming Effective. Approval of the terms of the Settlement Agreement by the Class Representatives is not a condition of requesting or receiving such payments.

12. Contingencies, Effect of Disapproval or Termination of Settlement

12.1 Except as otherwise provided herein, this Settlement and the consideration therefor are given by Respondent as set forth in this Settlement Agreement are in return for, and are contingent upon, entry of a Final Award.

12.2 Except as otherwise provided herein or agreed between the Parties, the obligations of the Parties pursuant to Sections 2, 3 and 5 of this Settlement Agreement do not become Effective until, and are conditioned upon and subject to:

(a) entry of an Order preliminarily approving the Settlement Agreement substantially in the form attached hereto as Exhibit 4;

(b) receipt and review by Respondent of all requests for exclusion from the Settlement Class;

(c) entry of the Final Award substantially in the form attached hereto as Exhibit 5; and

(d) the entry by a court of competent jurisdiction of an Order confirming the Final Award.

(e) If an objection thereto has been timely filed with the Court prior to entry of an Order confirming the Final Award, the expiration of the time to appeal the Order confirming the Final Award if no appeal is taken from the Order, or if an appeal is taken from the Order, the full and final affirmance of the Order confirming the Final Award.

(f) If an objection thereto has been timely filed with the Court prior to entry of an Order confirming the Final Award, this Settlement will be deemed Effective the first business day after the expiration of the time to appeal the Order confirming the Final Award if no appeal is taken from the Order, or if an appeal is taken from the Order, the first business day after the Order confirming the Final Award is fully and finally affirmed.

12.3 If all of the conditions specified herein are not met, then this Settlement Agreement shall be cancelled and terminated, subject to 12.5 hereof, unless Class Counsel and counsel for Respondent mutually agree in writing to proceed with this Settlement Agreement.

12.4 In the event that the Arbitrator fails to approve this Settlement Agreement and the Exhibits in all material respects, or if the Final Award is vacated, reversed or modified, either Party shall have the right to terminate this Settlement Agreement.

12.5 If, for any reason, this Settlement fails to become Effective and either Party terminates this Settlement Agreement, then, in such event:

(a) the Parties shall be deemed to have reverted to their respective status in the Arbitration as of the date of this Settlement Agreement and, except as otherwise expressly provided, the Parties shall proceed in all respects as if this Settlement Agreement and any related orders of the Arbitrator had not been entered;

(b) the conditional certification of the Settlement Class for settlement purposes only, provided for in Section 5.1 hereof, shall not be cited, considered or used in any manner in connection with any subsequent motion for class certification, or for any other purpose; and

(c) upon written notice to the Administrator, any funds in the Fund that have not been disbursed shall be returned to 23andMe within seven (7) business days of such notice.

12.6 Exhibit 6 shall address the effect on this Settlement Agreement in the event a specified number of members of the Settlement Class requests for exclusion from the Settlement Class. If, prior to the Final Approval Hearing, persons who otherwise would be members of the Settlement Class have filed with the Administrator timely requests for exclusion in accordance with Section 9 and the provisions of the Notice and the notice given pursuant thereto, and those persons exceed the number of "Opt-Outs" specified in Exhibit 6, 23andMe shall have, in its sole and absolute discretion, the option to terminate this Settlement Agreement in accordance with the procedure set forth in the Supplemental Agreement. Claimants' Counsel or the

Administrator, as the case may be, shall on a weekly basis deliver to 23andMe copies of all requests for exclusion from the Settlement Class. Exhibit 6 shall not be made publicly available or submitted to the Arbitrator, but made available for the Arbitrator to review upon request.

13. No Admission of Wrongdoing

13.1 Respondent has denied, and continues to deny, all allegations of wrongdoing or liability whatsoever with respect to the Released Claims, including any and all of the claims and allegations of wrongdoing by Claimants in the Arbitration, the Consolidated Federal Actions and the Related Arbitrations. Respondent is agreeing to this Settlement solely because it will eliminate the burden, expense, management distraction and uncertainties of further litigation and the distraction of resources and efforts from its business.

13.2 This Settlement Agreement, and any of its terms, or any agreement or order relating thereto, and any payment or consideration provided for herein, is not and shall not be used or construed as an admission by Respondent or any Released Person of any fault, wrongdoing, or liability whatsoever, or as an admission by any of the Claimants of any lack of merit of their claims against Respondent. Nothing contained in this Section 13.2 shall prevent this Settlement Agreement (or any agreement or order relating thereto) from being used, offered, or received in evidence in any proceeding to approve, enforce, or otherwise effectuate the Settlement (or any agreement or order relating thereto) or the Final Award, or in which the reasonableness, fairness, or good faith of the Parties in participating in the Settlement (or any agreement or order relating thereto) is in issue, or to enforce or effectuate provisions of this Settlement, the Final Award, or the Claim Forms as to Respondent, Claimants, or the Settlement Class Members.

14. Miscellaneous

14.1 **Authority of counsel.** All counsel who execute this Settlement Agreement represent and warrant that they have authority to do so on behalf of their respective clients.

14.2 **Commitment to support the settlement.** The Parties shall in good faith cooperate, assist and undertake all reasonable actions to effectuate this Settlement Agreement on a timely basis, including, but not limited to, taking all actions required by the Arbitrator in accordance with the schedule established by the Arbitrator. Neither Claimants, Class Counsel, Claimants' Counsel, Respondent or its counsel will voluntarily aid or encourage any objections to certification of the Settlement Class or to this Settlement Agreement (or any of its terms or provisions), nor voluntarily aid or encourage any putative class members, objectors or other persons to object to, opt-out of the Settlement Class or this Settlement Agreement, except to the extent that Class Counsel may have a duty to putative Settlement Class Members to respond to a request for information or advice about the procedure for objecting to or opting-out of the settlement. Class Counsel, Claimants' Counsel, Respondent, and Respondent's counsel are entitled to communicate with the putative Settlement Class Members about this Arbitration and this Settlement Agreement in the ordinary course of their business.

14.3 **Choice of law.** This Settlement Agreement shall be governed by and construed in accordance with the laws of California, without regard to principles of conflicts of law.

14.4 **Jurisdiction and Venue.** The Arbitrator shall retain jurisdiction with respect to implementation, interpretation and enforcement of the terms of this Settlement Agreement and any payments to be made thereunder, and all Parties submit to the jurisdiction of the Arbitrator for purposes of implementing, interpreting or enforcing this Settlement Agreement. The Parties, Class Counsel, Claimants' Counsel, Settlement Class Members, Respondent and its counsel

agree that venue shall, for all purposes relating to this provision of the Settlement Agreement, be exclusively before the Arbitrator except as to the Petition to Confirm the Final Award as set forth in this Settlement Agreement.

14.5 **Entire Agreement.** This Settlement Agreement (including exhibits expressly referenced herein and attached hereto) contains the entire agreement among the Parties with respect to the subject matter hereof and supersedes any prior written or oral agreements, representations, warranties, or statements. No representation, warranty, or inducement has been made to any party hereto concerning this Settlement Agreement other than the representations, warranties, and covenant contained herein. This Settlement Agreement may not be altered, modified or amended, or any of its provisions waived, unless by a writing, executed by counsel for all the Parties hereto.

14.6 **Headings.** The section headings used throughout this Settlement Agreement are for convenience only and shall not affect the interpretation or construction of this Settlement Agreement or any of its terms.

14.7 **No presumption against drafter.** None of the Parties hereto or their respective counsel shall be considered the drafter of this Settlement Agreement or any provision hereof for purposes of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof. This Settlement Agreement was drafted with substantial input by all Parties, and no reliance was placed on any representations other than those contained herein. No Party or person may offer in evidence or otherwise use, for purposes of suggesting any interpretation of this Settlement Agreement, any prior drafts of this Settlement Agreement.

14.8 **Time of the essence.** The Parties agree that time is of the essence in this Settlement Agreement. The Parties further agree that upon prior notice to the Arbitrator and after approval by the Arbitrator, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Settlement, as they deem necessary and appropriate.

14.9 **Counterparts.** This Settlement Agreement may be executed in counterparts, all of which shall be considered the same as if a single document shall have been executed, and shall become effective when such counterparts have been signed by each of the Parties and delivered to each of the other Parties.

14.10 **Non-waiver.** The failure of any Party to enforce at any time any provision of this Settlement Agreement shall not be construed to be a waiver of that provision, nor in any way to affect the validity of this Settlement Agreement or any part thereof, or the right of any Party thereafter to enforce each and every such provision. No waiver of any breach of this Settlement Agreement shall be held to constitute a waiver of any other breach.

14.11 **Confidentiality.** Nothing in this Settlement Agreement is intended to or shall be construed to affect the confidentiality of any documents or information provided to any Party by any Person during the course of this Arbitration and designated “CONFIDENTIAL” pursuant to the terms of the Stipulated Protective Order entered in this Arbitration on July 28, 2016.

14.12 **Materiality of Exhibits.** All of the exhibits to this Settlement Agreement expressly referenced herein are material and integral parts hereof and are fully incorporated herein by this reference.

14.13 **Privileges, immunities and protections.** Nothing in this Settlement Agreement, or the negotiations or proceedings relating thereto is intended to or shall be deemed to constitute a waiver of any applicable privilege or immunity, including, without limitation, the protections of

the California Constitution, the accountants' privilege, the attorney-client privilege, the joint prosecution or defense privilege, or work product immunity.

14.14 **Third Party Beneficiaries.** The Released Persons and Releasing Persons described in Sections 1.21 and 1.22 are intended to be and are third party beneficiaries of the releases contained in this Settlement Agreement.

14.15 **Confirmatory discovery.** Class Counsel may seek additional "confirmatory" discovery after the execution of this Settlement Agreement for the sole and limited purpose of confirming information provided to them in the course of settlement negotiations, mediation, or other discussions, conversations, or activities concerning the resolution of this Arbitration, or relating to objectors or their standing. Nothing herein shall preclude any Party from designating portions of any confirmatory discovery "CONFIDENTIAL" in accordance with the terms of the Stipulated Protective Order entered in this Arbitration.

14.16 **Insolvency.** 23andMe warrants, as to the payments made by or on behalf of it, at the time of such payment that 23andMe made or caused to be made pursuant to Section 2 above, it was not insolvent, nor did or will the payment required to be made by or on behalf of it render 23andMe insolvent, within the meaning of and/or for the purposes of the United States Bankruptcy Code, including §§ 101 and 547 thereof. This warranty is made by 23andMe and not by Respondent's counsel.

14.17 **Voidable transfers.** If a case is commenced with respect to Respondent (or any insurer contributing reimbursement funds to the Reimbursement Fund on behalf of Respondent) under Title 11 of the United States Bankruptcy Code, or a trustee, receiver, conservator, or other fiduciary is appointed under any similar law, and in the event of the entry of a final order of a court of competent jurisdiction determining the transfer of money to the Reimbursement Fund or

any portion thereof by or on behalf of Respondent to be a preference, fraudulent transfer, voidable transfer, or similar transaction, and any portion thereof is required to be returned, and such amount is not promptly deposited to the Reimbursement Fund by others, then, at the election of Class Counsel, the parties shall jointly move the Arbitrator to vacate and set aside the releases given and award entered in favor of the Released Parties pursuant to this Settlement Agreement, which releases and award shall be null and void, and the parties shall be restored to their respective positions in the Arbitration as of the date of this Settlement Agreement, and any cash amounts in the Reimbursement Fund shall be returned as provided in Section 12.5(c) above.

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed by their duly authorized representatives dated as of July 19, 2017.

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By: 

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Attorneys for Respondent

EXHIBIT 1

EXHIBIT 1 TO STIPULATION AND AGREEMENT OF SETTLEMENT AND RELEASE

1. Reference is made to paragraph 1.4 of the Settlement Agreement. This Exhibit sets forth the details of the Certificate to be disseminated by the Settlement Administrator or 23andMe to all eligible Settlement Class Members who do not submit a valid and timely Election for the Cash Compensation.

2. “Genetic Testing Kit” means a kit purchased from 23andMe that is used to collect saliva that is tested using microarray genotyping technologies for detection of nucleotide polymorphisms in or of human DNA to provide data for the provision of a service to an individual that includes both health- and ancestry-related genetic reports based on the results of such testing.

3. The Certificates shall be able to be used upon receipt by the Settlement Class Member or any transferee, and will be valid for the purchase of a Genetic Testing Kit as defined in Paragraph 2 above from 23andMe. Such purchase must be made through www.23andMe.com or another website established or controlled by 23andMe.

4. The Certificates will be valid for use by the Settlement Class Member or any transferee to purchase a Genetic Testing Kit for three years from the date of issuance by either 23andMe or the Administrator. The expiration date shall be provided either on or with the Certificate.

5. The Certificates shall be fully transferable by gift by the Settlement Class Member to any person for use by such persons, so long as the Certificates are used to purchase a Genetic Testing Kit as defined in Paragraph 2 above from 23andMe. The Certificates may not be sold or bartered and shall contain language on the front of the Certificate prominently stating that they may be transferred or gifted but not sold or bartered.

6. The Certificates may be used in combination with any other offer, promotion or discount made available to the public by 23andMe at time of use so long as the Certificates are used to purchase a Genetic Testing Kit as defined in Paragraph 2 above from 23andMe, but may not be used in combination with other Certificates to obtain additional discounts.

7. The Certificates will be assigned a unique identifier number such that they cannot be used or redeemed more than once.

8. 23andMe represents that the value of the Certificate exceeds its costs in processing a Genetic Testing Kit as defined in Paragraph 2 above and providing the results to the person who submits a Genetic Testing Kit for processing.

9. In accordance with Section 14.5 of the Settlement Agreement, Claimants and 23andMe, Inc. agree that this Exhibit is expressly incorporated into and a material term of the Settlement Agreement.

EXHIBIT 2

If You Purchased the 23andMe Personal Genome Service (the “PGS”) Between October 16, 2007 and November 22, 2013, You Are Entitled To Compensation

This is not a solicitation from a lawyer.

- A proposed settlement has been reached in a class action arbitration. The arbitration claims that 23andMe, Inc. (“23andMe”) sold its Personal Genome Service (“PGS”) to consumers based on inaccurate or misleading information regarding the PGS’s specifications and capabilities, and compliance with applicable federal and state laws. 23andMe denies these claims. The Arbitrator did not rule in favor of Claimants or 23andMe. Instead, the parties agreed to a proposed settlement to avoid the expense and risks of continuing the arbitration.
- You are a class member if you are a resident of the United States of America who purchased for personal use the PGS from 23andMe between October 16, 2007 and November 22, 2013 (“Class Period”) other than for purposes of resale or distribution or to provide to third parties for purposes of research or education.
- If you are a class member, you will be entitled for each PGS unit that you purchased during the Class Period to receive either a Certificate for \$40.00 off the cost of a 23andMe Genetic Testing Kit (the terms of the Certificate are detailed in Ex. 1 to the Settlement Agreement), or \$12.50 in Cash Compensation for each PGS unit that you purchased during the Class Period. You will be entitled to make an election for the \$12.50 in Cash Compensation for each PGS unit that you purchased during the Class Period. If you do not timely elect the Cash Compensation, you will receive the Certificate after the settlement is final.

**Please read this Notice carefully and in its entirety.
Your rights may be affected by the settlement of this Arbitration,
and you have a choice to make now about how to act:**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
WHAT IS THIS?	A proposed settlement has been reached in a class action arbitration. The arbitration alleges that 23andMe sold the PGS to consumers based on inaccurate or misleading information regarding the PGS Kit’s specifications and capabilities.
SUBMIT AN ELECTION ONLINE OR POSTMARKED BY [CLOSING DATE]	This is the only way to receive the Cash Compensation. If you do not submit an Election you will receive the Certificate after the settlement is final. By submitting an election, you will give up any rights to sue 23andMe separately about the same legal claims in this arbitration.

**Questions? Visit [WEBSITE]
or contact Class Counsel at info@whatleykallas.com**

<p>EXCLUDE YOURSELF FROM THE CLASS BY [CLOSING DATE]</p>	<p>If you opt out of the settlement, you will not be eligible to receive the Certificate or Cash Compensation, but you will keep any rights to sue 23andMe separately about the same claims alleged in this arbitration.</p>
<p>OBJECT OR COMMENT BY [CLOSING DATE]</p>	<p>You may write to the Arbitrator about why you do, or do not, like the settlement. You must remain in the class to comment in support of or in opposition to the settlement.</p>
<p>APPEAR IN THE ARBITRATION OR ATTEND A HEARING ON [FINAL APPROVAL DATE]</p>	<p>You may ask to speak before the Arbitrator about the fairness of the settlement. You may enter your appearance with the American Arbitration Association and/or retain an attorney to represent you at your own cost if you so desire.</p>
<p>DO NOTHING</p>	<p>If you do nothing, you will still receive the Certificate but will receive no Cash Compensation. You also give up your right to sue 23andMe on your own regarding any claims that are part of the settlement.</p>

- Your options – **and the deadlines to exercise them** – are further explained in this notice.

BASIC INFORMATION

1. Why did I get this notice?

If you purchased for personal use one or more of the PGS in the U.S. from 23andMe during the Class Period other than for purposes of resale or distribution or to provide to third parties for purposes of research or education, you have a right to know about a proposed settlement of a class action arbitration and your options. If you have received this Notice in the mail or by e-mail, you have been identified from available records as a purchaser of the PGS.

The Arbitrator ordered that you be given this Notice because you have a right to know about a proposed settlement of a class action arbitration, and about your options. If the Arbitrator finally approves this settlement, Kurtzman Carson Consultants, a Settlement Administrator appointed by the Arbitrator, will oversee the distribution of the Certificates and Cash Compensation. If you register for updates you can be informed of the progress of the settlement.

This Notice explains the arbitration, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them. The Arbitrator in charge of the case

**Questions? Visit [WEBSITE]
or contact Class Counsel at info@whatleykallas.com**

is Robert L. Brent of the American Arbitration Association, and the arbitration is known as *Karen Davis-Hudson and Sarah Diaz v. 23andMe, Inc.*, AAA Case No. 74-20-1400-0032. The people who sued are called the Claimants, and the company they sued, 23andMe, is called the Respondent.

2. What is this arbitration about?

This arbitration claims that 23andMe sold the PGS between October 16, 2007 and November 22, 2013 to consumers based on inaccurate or misleading information regarding the PGS's specifications and capabilities.

23andMe denies that it did anything wrong. The Arbitrator has not made any ruling on the factual allegations in the arbitration.

3. What is a class action arbitration and who is involved?

In a class action arbitration, one or more people called "Class Representatives" sue on behalf of other people who have similar claims. The people together are a "Class" or "Class Members." One arbitrator resolves the issues for everyone in the Class, except for those people who choose to exclude themselves from the Class.

4. Am I part of this Class?

If you fit into the following description, you are a Class Member:

All persons and entities resident in the United States of America who purchased for personal use the PGS from 23andMe during the Class Period other than for purposes of resale or distribution or to provide to third parties for purposes of research or education. Excluded from the Settlement Class are (1) employees of 23andMe, including its current or former directors, officers and counsel; (2) any entity that has a controlling interest in 23andMe; (3) 23andMe's affiliates and subsidiaries; and (4) the Arbitrator to whom this case is assigned and any member of the Arbitrator's immediate family. For an explanation of some of the Definitions used in this Notice, you can refer to the Settlement Agreement, which can be accessed at [\[WEBSITE\]](#).

THE CLAIMS IN THE ARBITRATION

5. What does the arbitration complain about?

23andMe sells the PGS throughout the United States. Claimants allege that 23andMe sold the PGS to consumers based on inaccurate or misleading information regarding the PGS's specifications and capabilities, and in violation of state and federal law. You can read [Claimants' First Amended Demand for Class Action Arbitration](#) <link> at [\[WEBSITE\]](#).

6. How does 23andMe answer?

**Questions? Visit [\[WEBSITE\]](#)
or contact Class Counsel at info@whatleykallas.com**

23andMe denies any wrongdoing and denies the Claimants' allegations. You can read 23andMe's [Response to the First Amended Demand for Class Action Arbitration](#) <link> at [WEBSITE].

7. Has the Arbitrator decided who is right?

The Arbitrator has not decided whether the Claimants are, or 23andMe is, correct. Instead, the parties agreed to a proposed settlement.

YOUR LEGAL RIGHTS AND OPTIONS

You have to decide now whether to submit a claim, do nothing at all, comment on or object to the proposed settlement, or ask to be excluded from the proposed settlement.

8. What does the proposed settlement provide if I submit a claim?

If you are a class member you will be entitled, for each PGS unit that you purchased during the Class Period, to receive either a Certificate for \$40.00 off the cost of a 23andMe Genetic Testing Kit, or \$12.50 in Cash Compensation. The terms and conditions of the Certificate are set forth more fully in Exhibit 1 to the Settlement Agreement, which can be accessed in the "Settlement Documents" section of the settlement website, [WEBSITE] and also will be provided with the Certificate. The Certificate can be fully transferable by gift to any person for the purchase of a Genetic Testing Kit in addition to any other available discounts, but may not be sold or bartered.

You will be entitled to make an election for the Cash Compensation for each PGS unit that you purchased during the Class Period. If no election is timely received, the Class Member will receive the Certificate after the settlement is final.

9. How do I submit an election form?

Class Members who wish to receive a Cash Compensation must submit an Election, which they can do either online at [website], by mail, email or facsimile. If no election is timely received, the Class Member will receive the Certificate after the settlement is final.

If you submit it by e-mail or facsimile, you must do so on or before 11:59 p.m. Pacific Time on [CLOSING DATE]. Alternatively, you may also submit your Election Form by mailing it to the following address: [KCC ADDRESS]. It must be postmarked no later than [CLOSING DATE].

If you received this Notice in the mail or by e-mail, a link or directions on how to make the Election notification online is included.

10. What happens if I do nothing at all?

By doing nothing, you are electing to stay in the Class but will not receive a Cash Compensation. If no election is timely received, the Class Member will receive the Certificate

Questions? Visit [WEBSITE]
or contact Class Counsel at info@whatleykallas.com

after the settlement is final.

Keep in mind that if you do nothing now, you will not be able to separately sue, or continue to sue, 23andMe as part of any other arbitration or lawsuit for the same claims that are the subject of this arbitration. You will also be legally bound by all of the Orders the Arbitrator and awards the Arbitrator issues in this arbitration. You must exclude yourself to start an arbitration or lawsuit, continue with an arbitration or lawsuit, or be part of any other arbitration or lawsuit against 23andMe about the subject matter of this arbitration ever again.

11. Why would I ask to be excluded?

If you exclude yourself from the Class – which is sometimes called “opting-out” of the Class – you won’t get a Certificate or Cash Compensation from the proposed settlement. However, you may then be able to separately sue or continue to sue 23andMe for the legal claims that are the subject of this arbitration. If you exclude yourself, you will not be legally bound by the Arbitrator’s awards in this proposed settlement.

If you bring your own arbitration or lawsuit against 23andMe after you exclude yourself, you will have to hire and pay your own lawyer for that arbitration or lawsuit, and you will have to prove your claims. If you exclude yourself so you can start or continue your own arbitration against 23andMe, you should talk to your own lawyer soon, because your claims may be subject to a filing deadline called a statute of limitations.

12. How do I exclude myself from the Class?

To exclude yourself from the Class, you must send a written request for exclusion *that is received no later than [EXCLUSION DATE]*, to:

[KCC ADDRESS]

Your request for exclusion *must* be signed by you and contain, in writing: (1) the name of this arbitration, “*Davis-Hudson, et al. v. 23andMe, Inc.*, AAA Case No. 74-20-1400-0032”; (2) your full name and address, telephone number; (3) a clear statement of your intention such as “I wish to be excluded from the Class and do not wish to participate in the settlement.”

13. How do I tell the Arbitrator I don’t like the proposed settlement?

You can ask the Arbitrator to deny approval by filing an objection with the Arbitrator. You cannot ask the Arbitrator to order a larger settlement; the Arbitrator can only approve or deny the settlement. If the Arbitrator denies final approval, no Certificates or Cash Compensation will be sent out and the arbitration will continue. If that is what you want to happen, you must object. If you believe the settlement is unsatisfactory, you may hire your own lawyer to appear before the Arbitrator for you if you wish; however, if you do, you will be responsible for paying that lawyer on your behalf. The Arbitrator will consider your views. By objecting, you understand that you may be subject to discovery.

To object, you must file with the American Arbitration Association a document signed by you or your counsel that contains all the following:

- Your name, current email and U.S. mail address, telephone number, and your lawyer’s name and address if you are objecting through counsel;

**Questions? Visit [WEBSITE]
or contact Class Counsel at info@whatleykallas.com**

- Clearly identify the case name and number of the arbitration, *Davis-Hudson, et al. v. 23andMe, Inc.*, AAA Case No. 74-20-1400-0032;
- A statement of your objections and a detailed description of the grounds for each objection you make;
- All the papers you intend to present to the Arbitrator in opposition to the settlement Agreement.

Your objection must be signed, mailed, and filed on or before **[OBJECTION DATE]** with the Arbitrator at:

American Arbitration Association
 950 Warren Avenue
 East Providence, RI 02914

14. What’s the difference between objecting and excluding?

Objecting is telling the Arbitrator you don’t like something about the settlement. You can object only if you stay in the Class. Excluding yourself is telling the Arbitrator you don’t want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

15. Can I appear or speak in this arbitration and proposed settlement?

As long as you do not exclude yourself, you can (but do not have to) participate and speak for yourself in this arbitration and proposed settlement. This is called making an appearance. You can also have your own lawyer speak for you, but you will have to pay for the lawyer yourself.

16. How can I appear in this arbitration?

If you want yourself or your own lawyer (instead of Class Counsel) to participate or speak for you in this arbitration, you must file with the Arbitrator a “Notice of Appearance.” The Notice of Appearance must contain the title of the arbitration, a statement that you wish to appear at the final approval hearing, and the signature of you or your lawyer.

Your Notice of Appearance can also state that you or your lawyer would like to speak at the final approval hearing on the proposed settlement. If you submit an objection (see question 14 above) and would like to speak about the objection at the final approval hearing, both your Notice of Appearance and your objection should be included in that information.

Your Notice of Appearance must be signed, mailed, and *postmarked by* **[OBJECTION DATE]** to the Arbitrator at:

American Arbitration Association
 950 Warren Avenue
 East Providence, RI 02914

THE LAWYERS REPRESENTING YOU

Questions? Visit **[WEBSITE]**
 or contact Class Counsel at **info@whatleykallas.com**

17. Do I have a lawyer in this case?

The law firms of Whatley Kallas, LLP and Podhurst Orseck, P.A. (collectively, “Class Counsel”) represent you and the other Class Members. You will not be charged for these lawyers. More information about Whatley Kallas, LLP and Podhurst Orseck P.A., their practice, and the firms’ lawyers are available at www.whatleykallas.com and www.podhurst.com.

18. Should I get my own lawyer?

If you choose to remain in the Class, you do not need to hire your own lawyer because Class Counsel are working on your behalf. But, if you want your own lawyer, you will be responsible for paying that lawyer.

19. How will the lawyers and the class representative be paid?

From the inception of the litigation in January 2014 to the present, Class Counsel have not received any payment for their services in prosecuting the case, nor have they been reimbursed for any out-of-pocket expenses they have incurred. When they ask the Arbitrator to finally approve the settlement, Class Counsel will also make a motion to the Arbitrator for an award of attorneys’ fees and expenses for an amount either agreed to or to be awarded by the Arbitrator up to \$____. No agreement has yet been reached as to this amount. No matter what the Arbitrator decides with regard to the requested attorneys’ fees and expenses, Settlement Class Members will never have to pay anything toward the fees or expenses of Class Counsel.

When Class Counsel ask the Arbitrator to finally approve the settlement, they will also ask for payment of up to \$10,000 each for the two named Class Representative in the arbitration. The payments to the named Class representatives will be based on the hours they expended acting as Class representatives. No conditions have been placed on requesting or obtaining such awards.

THE ARBITRATOR’S FAIRNESS HEARING

20. When and where will the Arbitrator decide whether to approve the settlement?

The Arbitrator will hold a final approval hearing at [TIME] on [DATE], at [ADDRESS]. This date may change without further notice to the class. Check the settlement website at [WEBSITE] to confirm that the date has not been changed. At this hearing, the Arbitrator will consider whether the settlement is fair, reasonable, and adequate. If there are timely objections that have been properly submitted, the Arbitrator will consider them. The Arbitrator will listen to people who have asked to speak at the hearing. The Arbitrator will also consider Class Counsel’s request for an award of attorneys’ fees, reimbursement of expenses and class representative payments. After the hearing, the Arbitrator will decide whether to approve the settlement, and whether to grant Class Counsel’s request for attorneys’ fees, expenses and class representative payments. We do not know how long these decisions

**Questions? Visit [WEBSITE]
or contact Class Counsel at info@whatleykallas.com**

will take. You may attend and you may ask to speak, but you don't have to attend or speak.

21. Do I have to come to the hearing?

No. Class Counsel is working on your behalf and will answer any questions the Arbitrator may have. You are welcome to attend the hearing at your own expense. If you send an objection, you don't have to come to the hearing to talk about it. As long as you served your written objection on time and as set forth in above, the Arbitrator will consider it. You may also pay your own lawyer to attend, but it's not necessary.

22. May I speak at the hearing?

You may ask the Arbitrator for permission to speak at the final approval hearing. To do so, you must follow the steps above. You cannot speak at the hearing if you excluded yourself.

FINAL SETTLEMENT APPROVAL

23. What is the effect of final settlement approval?

If the settlement is not finally approved, the case will proceed as if no settlement had been attempted. There can be no assurance that if the settlement is not approved and the arbitration resumes, the Class will recover more than is provided for under the settlement, or will recover anything.

If the Arbitrator grants final approval of the settlement and the Award is confirmed by the Court, the settlement will become final. After that date (the "Effective Date"), all members of the Settlement Class will release and forever discharge any and all claims or causes of action that were or could have been asserted in the Arbitration against the Released Persons to the extent they arise out of or relate to the marketing, advertising, promotion or sale of the PGS Kits based on the claims asserted in Claimants' First Amended Demand for Class Action Arbitration relating to the PGS Kits. The text of the release, as it appears in the Settlement Agreement, also provides as follows:

Upon the Effective Date, each of the Released Persons shall be deemed to have, and by operation of the Final Award shall have, fully, finally, and forever released, relinquished and discharged Claimants, including all members of the Settlement Class who have not validly opted out of the settlement, and Class Counsel and all other Claimants' Counsel for all claims relating to or arising out of or connected with the institution, prosecution, assertion, settlement or resolution of the Litigation and/or the Released Claims. By releasing and forever discharging all such claims, whether known or unknown, the Released Persons expressly, by operation of the Final Judgment, waive any and all provisions, rights and benefits conferred by California Civil Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OF SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS

OR HER SETTLEMENT WITH THE DEBTOR,

AND ANY OTHER LAW OF ANY JURISDICTION (DOMESTIC OR FOREIGN), OR PRINCIPLE OF COMMON LAW, WHICH IS SIMILAR, COMPARABLE, OR EQUIVALENT TO SAID PROVISION.

For an explanation of some of the Definitions used in this Notice, you can refer to the Settlement Agreement, which can be accessed at [WEBSITE].

GETTING MORE INFORMATION

24. Are more details available?

This Notice summarizes the proposed settlement. If you have questions about the precise terms and conditions of this settlement not discussed in this Notice, please see the Settlement Agreement at [WEBSITE]. You may also obtain a **copy** by writing to the Administrator (at the address listed above), by contacting Class Counsel as set forth below.

At [WEBSITE], you will find the Settlement Agreement <link>, Claimants' First Amended Demand for Class Arbitration <link>, Respondent's Response to First Amended Complaint for Class Action Arbitration <link>, the papers filed with the Arbitrator in support of this settlement <link>, and instructions on how to submit a Election Form <link>

You may also obtain more information by contacting Class Counsel by email at [EMAIL ADDRESS], or by calling the Settlement Administrator toll free at [KCC PHONE].

PLEASE DO NOT TELEPHONE THE ARBITRATOR OR THE AMERICAN ARBITRATION ASSOCIATION OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

DATED: _____, 2017

**ROBERT L. BRENT, AMERICAN
ARBITRATION ASSOCIATION**

EXHIBIT 3

LEGAL NOTICE

If You Purchased the 23andMe Personal Genome Service (the “PGS”) Between October 16, 2007 and November 22, 2013, You Are Entitled To Compensation

Davis-Hudson, et al. v. 23andMe, Inc., AAA Case No. 74-20-1400-0032

WHAT IS THIS NOTICE ABOUT?

An arbitration is pending before the American Arbitration Association (the “Arbitration”) that may affect your rights. The Arbitration claims that 23andMe, Inc. (“23andMe”) (“Respondent”) sold the Personal Genome Service (the “PGS”) to consumers based on inaccurate information regarding the PGS’s specifications and capabilities, and compliance with applicable federal and state laws. 23andMe denies these claims. The Arbitrator, Robert L. Brent, did not rule in favor of Claimants or 23andMe. Instead, the parties agreed to a proposed settlement.

AM I A MEMBER OF THE CLASS?

The class is defined as all persons who reside in the United States of America who purchased for personal use a PGS from 23andMe between October 16, 2007 and November 22, 2013 (“Class Period”) other than for purposes of resale or distribution or to provide to third parties for purposes of research or education.

WHAT DOES THE SETTLEMENT PROVIDE?

Subject to Arbitrator approval, all Settlement Class Members will be entitled, for each PGS unit(s) they purchased, to receive either a Certificate for \$40.00 off the cost of a 23andMe Genetic Testing Kit (“Certificate”), or to receive \$12.50 in cash (the “Cash Compensation”) for each qualifying purchase. Settlement Class Members will be entitled to make an election for the Cash Compensation for each PGS unit they purchased during the Class Period. If they do not make the Election to receive the Cash Compensation, they will receive the Certificate after the settlement is final. Ex. 1 to the Settlement Agreement, located at [WEBSITE] provides details on the terms and conditions of the Certificate.

WHAT ARE MY RIGHTS ?

You have a choice of whether to stay in the Class or not, and you must decide this now.

1. **You Can Accept the Settlement.** Class Members who wish to receive Cash Compensation **must** elect to do so by [CLOSING DATE]. You can download an Election form or submit it online at [WEBSITE]. Read the instructions carefully, and submit it online on or before [CLOSING DATE]. Alternatively, you may also submit an Election form by mailing it to the following address: [KCC ADDRESS]. It must be postmarked no later than [CLOSING DATE]. Election forms may also be e-mailed or faxed to [KCC E-MAIL] or [KCC FAX]. They must be received by the Administrator no later than 11:59 p.m. Pacific Time on [CLOSING DATE] to be considered valid. If you fail to submit a timely Election and do not exclude yourself from the settlement, then you will be bound by the settlement but will not receive Cash Compensation, and will instead receive the Certificate.

All consideration will be distributed after the settlement becomes final. If you stay in the Class, you will be legally bound by all orders and awards of the Arbitrator, and you won’t be able to sue, or continue to sue, 23andMe as part of any other arbitration or lawsuit involving the same claims that are in this arbitration.

2. **You Can Object to the Settlement.** You can ask the Arbitrator to deny approval by filing an objection with the Arbitrator. You can’t ask the Arbitrator to order a larger settlement; the Arbitrator can only approve or deny the settlement. If the Arbitrator denies approval no settlement payments will be sent out and the arbitration will continue. If that is what you want to happen, you must object. You may hire your own lawyer to appear before the Arbitrator for you if you wish; however, if you do, you will be responsible for paying that lawyer on your behalf.

Objections to the proposed settlement will be considered by the Arbitrator only if such objections are filed in writing by [OBJECTION DATE] with the American Arbitration Association, 950 Warren Avenue, East Providence, RI 02914. Objections must clearly state your name, email and U.S. mail address, telephone number, the title of this Arbitration, approximate date you purchased the PGS, and provide a detailed description of the grounds for each objection you make.

3. **You Can “Opt Out” of the Settlement.** If you exclude yourself from the Class – which is sometimes called “opting-out” of the Class – you won’t get a payment from the settlement but won’t be barred from asserting claims against 23andMe. Such notice shall include your name, email and U.S. mail address, telephone number, approximate date you purchased the PGS, and a statement that you want to be excluded from the arbitration *Davis-Hudson v. 23andMe, Inc.*, AAA Case No. 74-20-1400-0032. Send the written notice to [KCC ADDRESS] **no later than [DATE]**.

THE FAIRNESS HEARING

On [DATE], 2017, at [ADDRESS], the Arbitrator will hold a hearing to determine: (1) whether the proposed settlement is fair, reasonable, and adequate and should receive final approval; and (2) whether the application for Claimants’ attorneys’ fees and expenses of up to \$_____, and payment of up to \$10,000 to each of the two named Class Representatives should be granted. Class Members who support the proposed settlement do not need to appear at the hearing or take any other action to indicate their approval.

HOW CAN I GET MORE INFORMATION?

This is only a summary of the settlement. If you have questions or want to view the detailed notice or other documents about this arbitration, including the Settlement Agreement, you may visit [WEBSITE]. You may also contact Class Counsel by email through

www.whatleykallas.com, or call the Settlement
Administrator at : [**KCC Toll Free number.**]

By Order of Robert L. Brent, American Arbitration
Association.

EXHIBIT 4

1 **BEFORE THE AMERICAN ARBITRATION ASSOCIATION**

2
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
[PROPOSED] ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT AND DIRECTING
DISSEMINATION OF CLASS
NOTICE PROGRAM

13 This Motion having been brought before the Arbitrator by the Class Representatives
14 through Class Counsel¹, pursuant to Rule 8 of the American Arbitration Association
15 Supplementary Rules for Class Arbitration (“Supplementary Rules”), for an Order granting
16 preliminary approval of the Settlement Agreement with 23andMe, Inc. (“23andMe”), and directing
17 the dissemination of class notice and appointing Settlement Class Counsel and the Settlement
18 Administrator (the “Motion”); and the Arbitrator having reviewed the submissions of the parties,
19 and having found that the parties are entitled to the relief they seek, and for good cause shown;

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

21 1. The Arbitrator has jurisdiction over the subject matter of the Arbitration and over all
22 Parties to this Settlement, including, without limitation, the Settlement Class (as defined below in
23 paragraph 4), to enter this Order.

24 2. The Settlement Agreement submitted with the Motion is preliminarily approved as
25 fair, reasonable and adequate. The Settlement Agreement was arrived at in good faith, following
26 extensive arm’s-length negotiations by counsel for the Parties. The Arbitrator finds that the terms
27 of Settlement Agreement fall within the range of possible approval sufficient to warrant sending
28 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.

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

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

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

27 6. Whatley Kallas, LLP and Podhurst Orseck, P.A. are appointed as Class Counsel.
28

1 7. A Fairness Hearing shall be held before the Arbitrator on _____, 2017, at
2 _____ a.m. at [ADD ADDRESS], to determine (a) the merits of any valid and
3 timely objection submitted by Settlement Class Members; (b) whether this action finally meets
4 each of the prerequisites for class certification, and may properly be maintained as a class action
5 for settlement purposes only on behalf of the Settlement Class; (c) whether the Settlement should
6 receive final approval as fair, reasonable, adequate, and in the best interests of the Settlement
7 Class; (d) whether the Settlement Approval Order and Final Award should be entered granting final
8 approval of the Settlement, entering the Final Award and dismissing the claims asserted in the First
9 Amended Demand for Class Action Arbitration in this Arbitration with prejudice as to 23andMe
10 and the Released Parties, consistent with the terms provided for in the Settlement Agreement; (e)
11 whether Settlement Class Members should be bound by the Releases set forth in the Settlement
12 Agreement; (f) whether Settlement Class Members are barred by virtue of the terms of the
13 Settlement Agreement from filing, commencing, prosecuting, intervening in, participating in (as
14 class members or otherwise), organizing, or soliciting participation of other Settlement Class
15 Members to pursue any action in any jurisdiction based on or relating to any of the Released
16 Claims or the facts and circumstances relating thereto against any Released Party, and (g) whether
17 the application of Class Counsel for the payment of attorneys' fees and reasonable litigation
18 expenses, and payment of an additional award to Claimants are reasonable and should be approved.
19 The Fairness Hearing may be postponed, adjourned or continued by further order of the Arbitrator,
20 without further notice to the Settlement Class.

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

23 9. Any Person included within the Settlement Class who wishes to be excluded from
24 membership in the Settlement Class must do so in writing by mailing a request for exclusion from
25 the Settlement Class to the Administrator, postmarked no later than _____, 2017. To be
26 effective, the request for exclusion (or opt-out request) must: (a) include the case name and
27 number, (b) include the Person's full name and current mailing address; (c) identify the number of
28

1 PGS's purchased and the appropriate dates of purchase, (d) contain a statement that the Person is a
2 member of the Settlement Class, (e) include a statement clearly indicating the Person's intent to be
3 excluded from the Settlement Class; and (f) be signed by the Person submitting the request for
4 exclusion. Requests for exclusion must be submitted individually, and not on behalf of more than
5 one member of the Settlement Class. No member of the Settlement Class shall have the right or
6 may exclude themselves from the Settlement Class as a class or group of persons, in a
7 representative capacity on behalf of a class or group of persons, or on behalf of any other member
8 of the Settlement Class. Any request for exclusion that fails to satisfy the requirements of this
9 paragraph or that is not properly and timely submitted, as required above, shall be ineffective and
10 void absent further Order or agreement. Such member of the Settlement Class shall be deemed to
11 have waived all rights to opt out of the Settlement Class, and shall be deemed a Class Member for
12 all purposes pursuant to this 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
19 Settlement. Any such objection must be filed with the American Arbitration Association, at the
20 address listed below, and must be submitted to the Arbitrator and either emailed or postmarked by
21 no later than _____, 2017:

22 American Arbitration Association
23 950 Warren Avenue
24 East Providence, RI 02914
JonathanWeed@adr.org

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

1 (d) a statement in writing of all objections and the reasons therefor, and include all supporting
2 papers, including, without limitation, briefs, written evidence, and declarations and an agreement to
3 be 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
5 behalf of more than one Class Member. No Class Member may file objections as a class or group
6 of persons, in a representative capacity on behalf of a class or group of persons, or on behalf of any
7 other Class Member.

8 12. Settlement Class Members who timely submit valid written objections in
9 accordance with the requirements of Paragraph 11 of this Order may, but need not, appear and be
10 heard at the Fairness Hearing regarding any objections so submitted, in person or by counsel, but
11 must include in their written objections a statement of their intent to appear at the Fairness Hearing
12 and identify 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
14 objection to the Settlement in accordance with the provisions of this Order will be considered to
15 have waived any such objection, shall not be permitted to object to the Settlement at the Fairness
16 Hearing, shall be foreclosed from seeking any review of the Settlement or its terms by appeal or
17 otherwise, and 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
21 circumstances to apprise members of the Settlement Class of the pendency of this Arbitration, the
22 terms of the settlement, and their right to participate in, object to, or exclude themselves from the
23 settlement. The Arbitrator further finds that the full Notice, the summary Notice, the manner of
24 disseminating the notices, and the settlement website program as set forth in Section 6 and Exhibits
25 “_” and “_” of the Settlement Agreement are reasonable, constitute due, adequate and sufficient
26 notice to all persons entitled to receive notice, and meet the requirements of due process. The
27 Court hereby directs that notice be given pursuant to the terms set forth in the Settlement
28

1 Agreement, provided that the Parties, by agreement, may revise the notices and Election Form in
2 ways that are not material, or in ways that are appropriate to update those documents for purposes
3 of accuracy. All costs incurred in connection with the preparation and dissemination of any notices
4 to the Settlement Class and the costs of administering this settlement shall be paid by 23andMe
5 directly to the Administrator, subject 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
8 the First Amended Demand for Class Arbitration with prejudice against the Released Parties
9 consistent with the terms of the Settlement Agreement. Such order and judgment shall be fully
10 binding with 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
16 costs) returned to 23andMe by the Administrator pursuant to the terms of the Settlement
17 Agreement. In such event, the Settlement Agreement and all negotiations and proceedings relating
18 thereto shall be withdrawn without prejudice to the rights of the Parties, who shall be restored to
19 their respective 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:

24 Activation of Settlement Website by Settlement Administrator	Date: _____, 2017
25 Deadline for Dissemination of Summary Notice	Date: _____, 2017
26 Settlement Administrator to provide Court with Declaration confirming notice was provided in accordance with terms of Settlement	Date: _____, 2017

2
3 18. The deadline for any Election request for the Cash Compensation to be postmarked
4 or submitted online or by email or facsimile shall be _____, 2017. Unless the Arbitrator
5 orders otherwise, such Election requests must be submitted in conformance with the Settlement
6 Agreement and shall be processed in accordance with the procedures set forth in the Settlement
7 Agreement.

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

11 20. Any reply in support of such motions and requests, and any responses to any
12 objections submitted, shall be submitted and served by _____, 2017.

13 DATED: _____, 2017

14 _____
15 HON. ROBERT L. BRENT
16 ARBITRATOR

EXHIBIT 5

BEFORE THE AMERICAN ARBITRATION ASSOCIATION

KAREN DAVIS-HUDSON and SARAH DIAZ, individually and on behalf of all others similarly situated,

Claimants,

v.

23ANDME, INC.,

Respondent.

AAA CASE NO. 74-20-1400-0032

CLASS ACTION

[PROPOSED] SETTLEMENT APPROVAL ORDER AND FINAL AWARD

Hon. Robert L. Brent, Arbitrator

This motion having been brought before the Arbitrator by the Class Representatives through Class Counsel, pursuant to Rules 7 and 8 of the Supplementary AAA Rules for Class Arbitration (“Supplementary Rules”), for a Settlement Approval Order and Final Award of the settlement with Respondent 23andMe, Inc. (“23andMe”), and the application of Class Counsel for payment of attorneys’ fees and reimbursement of reasonable litigation expenses, and incentive awards to the Claimants (together, the “Motion”); and the Arbitrator, having reviewed the submissions of the Parties and all purported members of the Settlement Class, having held a hearing on [DATE], and having found that the Parties are entitled to the relief they seek for the reasons stated on the record during the hearing on the Motion based upon the submission of the Parties, and for good cause shown, the Arbitrator makes the following findings:¹

1. Notice to the Settlement Class has been provided in accordance with the Arbitrator’s Preliminary Approval Order dated on [DATE] (“Settlement Notice”). Such Settlement Notice has been provided in an adequate and sufficient manner, constitutes the best notice practicable under the circumstances, and satisfies the requirements of due process, Rule 6 of the Supplementary Rules, and any other applicable laws. The Settlement Notice apprised the members of the Settlement Class of the pendency of the litigation, of all material elements of the proposed settlement, of the effect on the members of the Settlement Class, and of their opportunity to

¹ 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 Opt out of the Settlement Class, and of their opportunity to opt out of the settlement, to object to
2 the settlement, and to appear at the final approval hearing. Full opportunity has been afforded to
3 Class Members to participate in the final approval hearing. Accordingly, the Arbitrator
4 determines that all Class Members are bound by this Settlement Approval Order and Final Award.

5 2. The Settlement Agreement was arrived at after extensive arm's-length negotiations
6 conducted in good faith by Class Counsel and counsel for 23andMe in the above-captioned action,
7 which included an in-person mediation session before David Geronemus on January 26, 2016 and
8 with the Hon. Carl West (ret.) on June 2, 2017, with subsequent follow-up negotiations after that
9 mediations during which the terms of the Settlement Agreement were extensively debated and
10 negotiated.

11 3. The claims against 23andMe present difficult and complex issues as to liability and
12 damages, as to which there are substantial grounds for differences of opinion as to how liability
13 would be determined and how damages would be calculated.

14 4. The settlement is fair, reasonable, and adequate compensation for the damages
15 alleged by Settlement Class Members in light of the complexity, expense, and duration of the
16 litigation, and the risks inherent and involved in establishing liability and damages, and in
17 maintaining the class action through trial and appeal.

18 5. The complex legal and factual posture of this case, and the fact that the Settlement
19 Agreement is the result of arm's-length negotiations support the finding that the settlement is fair,
20 reasonable, and adequate.

21 7. The promises and commitments of the Parties under the terms of the Settlement
22 Agreement constitute fair compensation for damages incurred given in exchange for the releases
23 set forth in the Settlement Agreement and as detailed herein.

24 8. The Arbitrator has jurisdiction over the Parties and Class Members, venue is
25 proper, the Arbitrator has jurisdiction to approve the Settlement Agreement, including all Exhibits
26 thereto, and the Arbitrator has jurisdiction to enter this Settlement Approval Order and Final
27 Award.

28 9. The Parties to the Settlement Agreement have submitted to the jurisdiction of this

1 Court for any action, proceeding, or dispute arising out of the Settlement Agreement. It is in the
2 best interests of the Parties and the members of the Settlement Class, and consistent with
3 principles of economy, that any dispute between any member of the Settlement Class (including
4 any dispute as to whether any person is a Class Member) and any of the Released Parties that in
5 any way relates to the applicability or scope of the Settlement Agreement or of this Settlement
6 Approval Order and Final Award, should be presented exclusively to the Arbitrator for resolution
7 by the Arbitrator.

8 Based upon the foregoing findings, and all of the evidence presented in the record, IT IS
9 HEREBY ORDERED AS FOLLOWS:

10 1. The Settlement Agreement submitted with the Motion is finally approved as fair,
11 reasonable, adequate, just, and in the best interests of the Settlement Class, and the Parties are
12 hereby directed to consummate the Settlement Agreement and provide the relief described in the
13 Settlement Agreement in accordance with the terms of the Settlement Agreement. In particular,
14 the payment of the Cash Compensation and the provision of Certificate Compensation required by
15 the Settlement Agreement shall be the means through which members of the Settlement Class are
16 paid compensatory damages by 23andMe pursuant the Final Award.

17 2. The Arbitrator finds that the objections to the settlement, if any, do not establish
18 that the settlement is unfair, unreasonable, inadequate, or should otherwise not be approved, and
19 are hereby overruled. Settlement Class Members who did not timely file and serve an objection to
20 the settlement in writing pursuant to the Settlement Agreement are deemed to have waived any
21 objection through any Petition to Vacate, collateral attack, or otherwise.

22 3. Based upon the submissions of the Parties, the Arbitrator finally finds as to the
23 Settlement Class for purposes of settlement only that: (a) the members of the Settlement Class are
24 so numerous as to make joinder of them impracticable; (b) there are questions of law and fact
25 common to the Settlement Class, and such questions predominate over any questions affecting
26 only individual members of the Settlement Class; (c) the Class Representatives' claims and the
27 defenses asserted thereto are typical of the claims of the members of the Settlement Class and the
28 defenses asserted thereto; (d) the Class Representatives and Class Counsel have fairly and

1 adequately protected the interests of the members of the Settlement Class throughout this action;
2 and (e) a class action is superior to all other available methods for fairly and efficiently resolving
3 this action, considering: (i) the interests of the members of the Settlement Class in individually
4 controlling the prosecution of separate actions; (ii) the extent and nature of the litigation
5 concerning the controversy already commenced by the members of the Settlement Class; (iii) the
6 desirability and undesirability of concentrating the litigation of these claims in a particular forum;
7 and (iv) the difficulties likely to be encountered in the management of a class action. The
8 Arbitrator confirms these previous findings based on the record submitted to the Arbitrator and
9 affirms certification of the Settlement Class.

10 4. Pursuant to Supplementary Rule 7, the Arbitrator hereby finally certifies this
11 action, for purposes of settlement, as brought on behalf of all persons residing in the United States
12 of America who purchased for personal use a PGS Kit from the 23andMe between October 16,
13 2007 and November 22, 2013 (“Class Period”) other than for purposes of resale or distribution or
14 to provide to third parties for purposes of research or education. Excluded from the Settlement
15 Class are (1) employees of 23andMe, including their current or former directors, officers and
16 counsel; (2) any entity that has a controlling interest in 23andMe; (3) 23andMe’s affiliates and
17 subsidiaries; and (4) the arbitrator to whom this case is assigned and any member of the
18 arbitrator’s immediate family. Further excluded from the Settlement Class are the Released
19 Persons. Settlement Class Members who exclude themselves from the Settlement, pursuant to the
20 procedures set forth in Section 9 of the Settlement Agreement, shall no longer thereafter be
21 Settlement Class Members and shall not be bound by this Settlement Agreement and shall not be
22 eligible to make a claim for any benefit under the terms of this Settlement Agreement.

23 5. The Arbitrator finally approves the Class Representatives as representatives of the
24 Settlement Class, and finds that the Class Representatives adequately represented the Settlement
25 Class for purposes of entering into and implementing the Settlement Agreement.

26 6. The Arbitrator finally designates Class Counsel as counsel for the Settlement Class
27 for the sole purposes of the settlement, and finds that Class Counsel adequately represented the
28 Settlement Class for purposes of entering into and implementing the Settlement Agreement.

1 7. The proposed attorneys' fee and expense award to Class Counsel in the amount of
2 \$_____ is hereby approved as reasonable. Such fees and expenses shall be paid pursuant
3 to the terms of the Settlement Agreement.

4 8. The Arbitrator also approves incentive awards of \$10,000 each to the two Class
5 Representatives. Such incentive awards shall be paid pursuant to the terms of the Settlement
6 Agreement.

7 9. All claims in the Demand other than (5) Breach of the Implied Warranty of
8 Merchantability and (6) Breach of the Implied Warranty of Fitness for a Particular Purpose are
9 hereby dismissed on the merits with prejudice, effective immediately, consistent with the terms of
10 the Settlement Agreement. The Demand's claims for (5) Breach of the Implied Warranty of
11 Merchantability and (6) Breach of the Implied Warranty of Fitness for a Particular Purpose are
12 hereby dismissed on the merits with prejudice, effective immediately upon the 23andMe's
13 payment of all valid and timely claims for the Cash Compensation and Certificate Compensation,
14 consistent with the terms of the Settlement Agreement. If this Award is subsequently vacated or
15 not confirmed, this provision shall be of no force and effect and shall automatically be vacated.

16 10. The terms of the Settlement Agreement, including all Exhibits thereto, and of this
17 Settlement Approval Order and Final Award have been agreed to be binding on all parties hereto,
18 and shall be binding on, and shall have *res judicata* and preclusive effect in, any pending or future
19 arbitrations maintained by the named Claimants and each Settlement Class Member, as well as
20 their respective heirs, beneficiaries, administrators, successors, and assigns, asserting the claims
21 subject to the Releases set forth in the Settlement Agreement. This Settlement Approval Order
22 and Final Award and the Settlement Agreement may be filed in any action asserting the claims
23 subject to the Releases set forth in the Settlement Agreement to support any defense or
24 counterclaim, including, without limitation, those based on principles of *res judicata*, collateral
25 estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim
26 preclusion, issue preclusion, or similar defense or counterclaim.

27 11. The Releases, which are set forth in Section 3 of the Settlement Agreement, are
28 expressly incorporated herein in all respects and are deemed effective as of the date of this

1 Settlement Approval Order and Final Award.

2 12. Upon entry of this Settlement Approval Order and Final Award, all persons bound
3 by the Releases set forth in Section 3 of the Settlement Agreement, by operation of this Settlement
4 Approval Order and Final Award, are permanently barred from instituting, maintaining, filing,
5 commencing, prosecuting, or proceeding in any action with respect to any of the claims set forth in
6 Section 3 of the Settlement Agreement, except as provided under the terms of the Settlement
7 Agreement, to the fullest extent permitted by law.

8 13. The Settlement Agreement may be pleaded as a full and complete defense to, and
9 may be used as the basis for a temporary restraining order or preliminary or permanent injunction
10 against, any action, suit or other proceeding, which has been or may be instituted, prosecuted,
11 continued to be prosecuted, or attempted to be brought by any person bound by the Releases in
12 Section 3 of the Settlement Agreement, asserting any of the claims set forth in Section 3 of the
13 Settlement Agreement.

14 14. Without affecting the finality of the judgment entered pursuant to this Settlement
15 Approval Order and Final Award, the Arbitrator retains continuing jurisdiction over this
16 settlement, including the administration, consummation, and enforcement of the Settlement
17 Agreement. In addition, without affecting the finality of the award entered pursuant to this
18 Settlement Approval Order and Final Award, the Arbitrator retains jurisdiction over the Parties,
19 the Released Parties, and each Settlement Class Member and their counsel, who are deemed to
20 have submitted to the exclusive jurisdiction of the American Arbitration Association for any suit,
21 action, proceeding, or dispute arising out of or relating to this Settlement Approval Order and
22 Final Award and the terms of the Settlement Agreement.

23 15. Without further order of the Arbitrator, the Parties may agree to reasonably
24 necessary extensions of time to carry out any of the provisions of the Settlement Agreement, as
25 modified by either the Preliminary Approval Order or this Settlement Approval Order and Final
26 Award.

27 16. In the event that the Effective Date does not occur, this Settlement Approval Order
28 and Final Award shall be rendered automatically null and void and be vacated, and in such event,

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all orders entered and releases delivered in connection with this settlement shall be null and void and be automatically vacated.

17. For purposes of any Petition to Confirm this ruling, this final arbitration award is considered entered as of the _____ day of _____, 2017.

Robert L. Brent
Arbitrator