

1 BEFORE THE AMERICAN ARBITRATION ASSOCIATION

2
3 KAREN DAVIS-HUDSON and SARAH
4 DIAZ, individually and on behalf of all others
similarly situated,

5 Claimants,

6 v.

7 23ANDME, INC.,

8 Respondent.

AAA CASE NO. 74-20-1400-0032

CLASS ACTION

~~PROPOSED~~
RLB

**[PROPOSED] SETTLEMENT
APPROVAL ORDER AND FINAL
AWARD**

Hon. Robert L. Brent, Arbitrator

9 This motion having been brought before the Arbitrator by the Class Representatives
10 through Class Counsel, pursuant to Rules 7 and 8 of the Supplementary AAA Rules for Class
11 Arbitration (“Supplementary Rules”), for a Settlement Approval Order and Final Award of the
12 settlement with Respondent 23andMe, Inc. (“23andMe”), and the application of Class Counsel for
13 payment of attorneys’ fees and reimbursement of reasonable litigation expenses, and incentive
14 awards to the Claimants (together, the “Motion”); and the Arbitrator, having reviewed the
15 submissions of the Parties and all purported members of the Settlement Class, having held a
16 hearing on November 15, 2017, and having found that the Parties are entitled to the relief they seek
17 for the reasons stated on the record during the hearing on the Motion based upon the submission of
18 the Parties, and for good cause shown, the Arbitrator makes the following findings:¹

19 1. Notice to the Settlement Class has been provided in accordance with the Arbitrator’s
20 Preliminary Approval Order dated August 16, 2017 (“Settlement Notice”). Such Settlement Notice
21 has been provided in an adequate and sufficient manner, constitutes the best notice practicable
22 under the circumstances, and satisfies the requirements of due process, Rule 6 of the
23 Supplementary Rules, and any other applicable laws. The Settlement Notice apprised the members
24 of the Settlement Class of the pendency of the litigation, of all material elements of the proposed
25 settlement, of the effect on the members of the Settlement Class, and of their opportunity to

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27 ¹ Except as otherwise specified herein, all defined terms set forth in this Order shall have the same
28 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 Honorable Carl West (ret.) on June 2, 2017, with subsequent follow-up negotiations after
9 that 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 Arbitrator for any action, proceeding, or dispute arising out of the Settlement Agreement. It is in
2 the 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 to the Final Award.

17 2. The Arbitrator finds that the objections to the settlement do not establish that the
18 settlement is unfair, unreasonable, inadequate, or should otherwise not be approved, and are
19 hereby overruled. Settlement Class Members who did not timely file and serve an objection to the
20 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 \$2,250,000 is hereby approved as reasonable. Such fees and expenses shall be paid pursuant to
3 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 15th day of November, 2017.

Robert L. Brent
Robert L. Brent
Arbitrator