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16 UNITED STATES DISTRICT COURT  
17 NORTHERN DISTRICT OF CALIFORNIA

18 Camie Picha, individually and on behalf of  
19 others similarly situated,

20 Plaintiff,

21 v.

22 23andMe, Inc.,

23 Defendant

No.

**COMPLAINT—CLASS ACTION**

JURY DEMAND

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**“We believe it's our responsibility to provide a safe place for people to explore their DNA. Our commitment to privacy is built on a foundation of transparency and choice — our customers know that they are always in control of their data.”**

**- Jacquie Haggarty -  
Vice President, General Counsel, and Privacy Officer**

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10 1. Plaintiff Camie Picha (“Plaintiff”), individually and for all others similarly situated,  
11 brings this action against Defendant 23andMe, Inc. (“23andMe” or “Defendant”) on behalf of the  
12 victims of a targeted cyberattack on 23andMe that was announced on October 6, 2023 (“the Data  
13 Breach”). Plaintiff’s and Class Members’ most sensitive personally identifiable information  
14 (“PII”) and protected health information (“PHI”) (collectively, “Private Information”)—including  
15 but not limited to name, sex, date of birth, genetic information, predicted relationships with genetic  
16 matches, ancestry reports, ancestors’ birth locations and family names, family tree information,  
17 profile pictures, and geographic location—was compromised and exfiltrated in the data breach  
18 announced by 23andMe on October 6, 2023 (the “Data Breach”).<sup>1</sup> Plaintiff brings this action  
19 against Defendant 23andMe for its failure to properly secure and safeguard the Private Information  
20 of herself and all those similarly situated, seeking monetary damages, restitution, and/or injunctive  
21 relief. The following allegations are made upon information and belief derived from, among other  
22 things, investigation of counsel, public sources, and the facts and circumstances as currently  
23 known. Because only 23andMe (as well as the cybercriminals who perpetrated the Data Breach)  
24 have knowledge of what information was compromised, Plaintiff reserves the right to supplement  
25 these allegations with additional facts and injuries as they are discovered.

26  
27 <sup>1</sup> 23andMe, Inc., *Addressing Data Security Concerns*, 23andMe Blog (Dec. 5, 2023, 2:45 PM  
28 PST), <https://blog.23andme.com/articles/addressing-data-security-concerns>; *see also* Lily Hay Newman, *23andMe User Data Stolen in Targeted Attack on Ashkenazi Jews*, Wired (Oct. 6, 2023, 5:53 PM), <https://www.wired.com/story/23andme-credential-stuffing-data-stolen/>.

## I. INTRODUCTION

23andMe collects and maintains the genetic information of its customers—one of if not the most personal and highly sensitive forms of personally identifiable information and protected health information in existence. 23andMe profits from the highly sensitive Private Information that it collects and maintains, including through providing direct-to-consumer genetic testing services. 23andMe recognizes that it has an enormous responsibility to protect this highly sensitive Private Information, and it assures consumers through its Privacy and Data Protection statement that 23andMe “exceed[s] industry data protection standards and have achieved 3 different ISO certifications to demonstrate the strength of our security program.”<sup>2</sup> Likewise, its Privacy and Data Protection statement acknowledges that its consumers “entrust us with important personal information,” because of which, “since day one, protecting your privacy has been our number one priority,” and 23andMe is “committed to providing you with a safe place where you can learn about your DNA knowing your privacy is protected.” However, 23andMe completely failed to meet these promises and responsibilities to protect the Private Information of millions of its customers. Instead, 23andMe suffered a massive Data Breach in which the most highly sensitive Private Information of approximately 7 million of its consumers was compromised.

## II. JURISDICTION AND VENUE

This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2), because this is a class action in which the matter in controversy exceeds the sum of \$5,000,000, there are more than 100 proposed Class Members, and minimal diversity exists, as Defendant is a citizen of States different from that of at least one Class member. This Court also has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a) because all claims alleged herein form part of the same case or controversy.

This Court has personal jurisdiction over 23andMe because 23andMe is headquartered in California, within this District; 23andMe has its principal place of business in Santa Clara County, California, within this District; and 23andMe is authorized to and regularly

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<sup>2</sup> 23andMe, Inc., *Addressing Data Security Concerns*, 23andMe Blog, <https://blog.23andme.com/articles/addressing-data-security-concerns>.

1 conducts business in the State of California, including by selling, marketing, and advertising its  
2 products and services to Class Members located in the State of California and within this District.  
3 23andMe therefore has sufficient minimum contacts to render the exercise of jurisdiction by this  
4 Court proper and necessary.

5 5. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a) through (d) because  
6 23andMe’s principal place of business is located in this District and a substantial part of the events  
7 or omissions giving rise to Plaintiff’s claims occurred in, was directed to, and/or emanated from  
8 this District.

### 9 III. DEFENDANT

10 6. Defendant 23andMe, Inc. is a business incorporated under the laws of the state of  
11 Delaware with its principal place of business in California, at 223 North Mathilda Avenue in  
12 Sunnyvale, California 94086. 23andMe is a genetic testing company that designs its products in  
13 California, and its marketing efforts emanate from California.

14 7. 23andMe purports to be a leading consumer genetics and research company,  
15 founded in 2006, that describes its mission as helping people access, understand, and benefit from  
16 the human genome. According to the “Corporate Profile” on its website, 23andMe touts itself as  
17 having “pioneered direct access to genetic information” and being “the only company with  
18 multiple FDA clearances for genetic health reports.”<sup>3</sup>

19 8. As of March 31, 2023, 23andMe cumulatively possesses and stores the Private  
20 Information of over 14.1 million people in its databases.<sup>4</sup> This Private Information includes genetic  
21 information provided by individuals since 2006 in connection with the Company’s “Personal  
22 Genome Service” business, which purports to provide consumers “with a broad suite of genetic  
23 reports, including information on customers’ genetic ancestral origins, personal genetic health

24 \_\_\_\_\_  
25 <sup>3</sup> 23andMe, *Corporate Profile*, 23andMe, Inc.: Investor Relations,  
26 <https://investors.23andme.com/> (last visited Dec. 21, 2023); *see also* 23andMe, *23andMe*  
27 *Receives FDA Clearance for Direct-to-Consumer Genetic Test on a Hereditary Prostate*  
28 *Cancer Marker*, 23andMe, Inc.: Press Release (Jan. 10, 2022),  
<https://investors.23andme.com/news-releases/news-release-details/23andme-receives-fda-clearance-direct-consumer-genetic-test>.

<sup>4</sup> 23andMe Holding Co., Annual Report (Form 10-K) (May 25, 2023) (“FY 2022 10-K”) at 69.

1 risks, and chances of passing on certain rare carrier conditions to their children, as well as reports  
2 on how genetics can impact responses to medication.”<sup>5</sup>

3 **IV. PLAINTIFF**

4 9. Plaintiff Camie Picha is a resident of the State of Washington.

5 10. Plaintiff Picha is a customer of 23andMe, who purchased a 23andMe kit in June  
6 2022.

7 11. In June or July 2022, Plaintiff Picha provided a sample of her genetic material to  
8 23andMe for testing. Ms. Picha was required to provide her Private Information, including her  
9 name, gender, date of birth, geographic location, and genetic material, to 23andMe in order to  
10 obtain 23andMe’s services. At the time of the Data Breach, Ms. Picha’s Private Information was  
11 maintained by 23andMe.

12 12. Plaintiff Picha learned about the Data Breach from an email she received from  
13 23andMe on or about October 11, 2023. The October 11 email did not state that Ms. Picha’s Private  
14 Information was compromised, but rather provided limited information about the Data Breach,  
15 including that “certain profile information—which a customer creates and chooses to share with  
16 their genetic relatives in the DNA Relatives feature—was accessed from individual 23andMe.com  
17 accounts . . . without the account users’ authorization.” This email also made laudatory  
18 representations about 23andMe’s internal security practices, including the following.

19 Security and privacy are the highest priorities at 23andMe. We exceed industry data  
20 protection standards and have achieved three different ISO certifications to  
21 demonstrate the strength of our security program. We actively and routinely  
22 monitor and audit our systems to ensure that your data is protected. When we  
23 receive information through those processes or from other sources claiming  
24 customer data has been accessed by unauthorized individuals, we immediately  
25 investigate to validate whether this information is accurate. Beginning in 2019,  
we’ve offered and encouraged users to use multi-factor authentication (MFA),  
which provides an extra layer of security and can prevent bad actors from accessing  
an account through recycled passwords.

26 13. Subsequently, on or about October 23, 2023, Ms. Picha received a second email  
27 from 23andMe in which the Company notified Ms. Picha that certain of her Private Information

28 <sup>5</sup> FY 2022 10-k at 92.

1 was “exposed to the threat actor” in the Data Breach. Similar to the October 11 email, the October  
2 23 email similarly provided limited information about the Data Breach and made positive  
3 representations about the Company’s internal security practices.

4 14. Plaintiff Picha immediately attempted to contact 23andMe to obtain more details  
5 about the data breach but was unable to contact anyone at 23andMe.

6 15. Plaintiff Picha spent considerable time and money researching and responding to  
7 the Data Breach. Among other things, she attempted to find information about the nature of the  
8 Data Breach, attempted to identify what specific information of hers had been stolen in the Data  
9 Breach, changed the password to her 23andMe account as well as the passwords to other online  
10 accounts, and reviewed her accounts for fraudulent activity.

11 16. Plaintiff Picha also spent time and money researching and purchasing identity theft  
12 protection services, as 23andMe did not offer Plaintiff Picha any credit monitoring or identity theft  
13 protection services as a result of the Data Breach.

14 17. Also as a result of the Data Breach, Plaintiff Picha spent time placing credit freezes  
15 with the three major credit reporting bureaus.

16 18. In these regards, the Private Information that was accessed in the Data Breach was  
17 the kind of highly sensitive information that can be used to commit fraud and identity theft, and it  
18 is reasonable and foreseeable that Ms. Picha would take, and will continue to take, necessary  
19 measures to protect herself from identity theft and fraud resulting from the disclosure of her Private  
20 Information.

21 19. Through the identity theft protection service she purchased, Plaintiff Picha learned  
22 that her personal information has been compromised and is being offered for sale on the dark web.

23 20. After the Data Breach, Plaintiff Picha experienced a significant increase in  
24 unsolicited telephone calls, texts, and emails, including apparent attempts at identity theft and  
25 fraud such as phishing. In this regard, Plaintiff Picha used a relatively new email address for her  
26 23andMe account, which is not associated with many other online accounts and did not receive  
27 many spam emails prior to the data breach.

28 21. Plaintiff Picha places significant value in the security of her Private Information.

1 Plaintiff Picha entrusted her Private Information to 23andMe with the understanding that 23andMe  
2 would keep her Private Information secure and employ reasonable and adequate security measures  
3 to ensure that it would not be compromised. Plaintiff Picha is very careful about sharing her  
4 sensitive Private Information and would not have entrusted her Private Information to 23andMe  
5 had she known of its lax data security policies.

6 22. Plaintiff Picha is extremely concerned about how the theft of her highly sensitive  
7 23andMe Private Information may impact her, including with respect to the security of her other  
8 online accounts, her personal healthcare information, and the associated risks of identity theft,  
9 healthcare fraud, or other fraud related to the Private Information exposed in the Data Breach. In  
10 this regard, Ms. Picha has suffered emotional distress as a result of the release of her Private  
11 Information, including anxiety, concern, and unease about unauthorized parties viewing, sharing,  
12 and misusing her Private Information. This emotional distress has been compounded by the fact  
13 that 23andMe has still not fully informed her of key details about the Data Breach.

14 23. 23andMe thus betrayed Plaintiff Picha's trust and failed to properly maintain the  
15 privacy of her Private Information and prevent unauthorized access to that Private Information.

16 24. Given the highly-sensitive nature of the information stolen, and its subsequent  
17 dissemination to unauthorized parties, Plaintiff Picha has already suffered injury and remains at a  
18 substantial and imminent risk of future harm as a result of having her Private Information  
19 compromised in the Data Breach, including but not limited to: (i) lost or diminished value of her  
20 Private Information; (ii) lost opportunity costs associated with attempting to mitigate the  
21 consequences of the Data Breach, including but not limited to lost time; (iii) invasion of privacy;  
22 (iv) loss of benefit of the bargain; and (v) the substantial and imminent risk of future harm resulting  
23 from the disclosure of her Private Information in the Data Breach.

24 25. As a result of the Data Breach, Plaintiff Picha is at a present risk and will continue  
25 to be at increased risk of identity theft and fraud, and other risks of harm unique to the Private  
26 Information disclosed in the Data Breach for years to come. Plaintiff Picha therefore anticipates  
27 spending considerable time and money on an ongoing basis to attempt to mitigate and address  
28 harms caused by the Data Breach.





1 and valuable type of [PII] . . . irrevocable once breached.”<sup>8</sup> In this regard, an individual’s unique  
2 and immutable genetic information is the most confidential and valuable form of PHI.

3 32. Similarly, this Private Information includes genetic information provided by  
4 individuals since 2006 in connection with the Company’s “Personal Genome Service” business,  
5 which purports to provide consumers “with a broad suite of genetic reports, including information  
6 on customers’ genetic ancestral origins, personal genetic health risks, and chances of passing on  
7 certain rare carrier conditions to their children, as well as reports on how genetics can impact  
8 responses to medication.”<sup>9</sup>

9 33. In order for 23andMe to offer its services to customers including Plaintiff and the  
10 Class Members, Plaintiff and Class Members were required to transfer possession of their Private  
11 Information—including their personal genetic material—to 23andMe. 23andMe thereby acquires  
12 and electronically stores Private Information provided to it by its customers, and 23andMe was  
13 therefore required to ensure that Plaintiff’s and Class Members’ Private Information was not  
14 disclosed or disseminated to unauthorized third parties.

15 34. Through the possession and use of Plaintiff’s and Class Members’ Private  
16 Information—including an individual’s unique genetic information, which is the most sensitive  
17 information possible—23andMe assumed duties owed to Plaintiff and Class Members to secure,  
18 maintain, protect, and safeguard that Private Information against unauthorized access and  
19 disclosure through reasonable and adequate security measures. Therefore, 23andMe knew or  
20

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21 <sup>8</sup> Junyuan Ke, et al., *My Data or My Health? Heterogenous Patient Responses to Healthcare*  
22 *Data Breach*, SSRN, 7 (Feb. 10, 2022), <https://ssrn.com/abstract=4029103>. (Under the Health  
23 Insurance Portability and Accountability Act (“HIPAA”), 42 U.S.C. §§ 1320d, et seq., PHI is  
24 considered to be individually identifiable information relating to the past, present, or future  
25 health status of an individual that is created, collected, or transmitted, or maintained by a  
26 HIPAA-covered entity in relation to the provision of healthcare, payment for healthcare  
27 services, or use in healthcare operations. *See also* 45 C.F.R. § 160.103. Health information such  
28 as diagnoses, treatment information, medical test results, and prescription information are  
considered PHI under HIPAA, as are genetic data, national identification numbers and  
demographic information such as birth dates, gender, ethnicity, and contact and emergency  
contact information.) *See also Summary of the HIPAA Privacy Rule*, U.S. Dep’t of Health &  
Human Servs. (2003), <https://www.hhs.gov/sites/default/files/privacysummary.pdf>.

<sup>9</sup> FY 2022 10-K at 92, *supra* note 4.

1 should have known that it was responsible for safeguarding Plaintiff’s and Class Members’ Private  
2 Information from unauthorized access and misuse.

3 35. 23andMe has publicly touted its data security and cybersecurity abilities, including  
4 stating that the Company “is committed to providing you with a safe and secure place where you  
5 can learn about your DNA knowing your privacy is protected” and that it “take[s] security  
6 seriously.”<sup>10</sup>

7 36. 23andMe assures customers that “[y]our privacy comes first.”<sup>11</sup> “When you explore  
8 your DNA with 23andMe, you entrust us with important personal information. That’s why, since  
9 day one, protecting your privacy has been our number one priority. We’re committed to providing  
10 you with a safe place where you can learn about your DNA knowing your privacy is protected.”<sup>12</sup>

11 37. 23andMe’s customers are also told that their genetic data will not be shared with  
12 third parties “without your explicit consent” and that “[y]our data is fiercely protected by security  
13 practices that are regularly reviewed and updated” and the Company is “doing everything in our  
14 power to keep your personal data safe.”<sup>13</sup>

15 38. 23andMe was aware of methods that would provide additional, heightened security  
16 that would safeguard its customers’ highly sensitive data from unauthorized access and disclosure,  
17 including but not limited to requiring users to change their passwords frequently, requiring the use  
18 of “strong” passwords, and mandating the use of multi-factor authentication (“MFA”) that would  
19 require its customers to enter more information than just a single password to access their accounts.  
20 Indeed, 23andMe acknowledges that, while MFA “provides an extra layer of security and can  
21 prevent bad actors from accessing an account through recycled passwords,” it only “offered and  
22 encouraged” use of MFA starting in 2019.<sup>14</sup>

23 39. 23andMe claims that it “is committed to providing you with a safe and secure place  
24 where you can learn about your DNA knowing your privacy is protected” and that it “take[s]

25 <sup>10</sup> 23andMe Blog, *supra* note 2.

26 <sup>11</sup> 23andMe, *Your privacy comes first*, 23andMe Inc.: Privacy,  
<https://www.23andme.com/privacy/> (last visited Dec. 21, 2023).

27 <sup>12</sup> *Id.*

28 <sup>13</sup> *Id.*

<sup>14</sup> 23andMe Blog, *supra* note 2.

1 security seriously.”<sup>15</sup> Moreover, the Company claims that:

2 [W]e exceed industry data protection standards and have achieved three different  
3 ISO certifications to demonstrate the strength of our security program. We actively  
4 and routinely monitor and audit our systems to ensure that your data is protected.  
5 When we receive information through those processes or from other sources  
6 claiming customer data has been accessed by unauthorized individuals, we  
7 immediately investigate to validate whether this information is accurate.<sup>16</sup>

8 40. Likewise, 23andMe promises that “Privacy is in our DNA,” and Jacquie Haggarty,  
9 23andMe’s Vice President, General Counsel, and Privacy Officer, represents that “We believe it’s  
10 our responsibility to provide a safe place for people to explore their DNA,” on account of which  
11 23andMe’s “commitment to privacy is built on a foundation of transparency and choice—our  
12 customers know that they are always in control of their data.”<sup>17</sup>

13 41. 23andMe similarly recognizes that “[w]hen you explore your DNA with 23andMe,  
14 you entrust us with important personal information,” and “since day one, protecting your privacy  
15 has been our number one priority.”<sup>18</sup> 23andMe further reassures its customers that “[y]ou are in  
16 control of your data,” and “you decide how your information is used and with whom it is shared.”<sup>19</sup>

17 42. Plaintiff and Class Members entrusted their Private Information to 23andMe, its  
18 officials, and agents. Plaintiff and Class Members relied on 23andMe to keep their Private  
19 Information secure and safeguarded against unauthorized access and disclosure to unauthorized  
20 persons. 23andMe owed a duty to Plaintiff and Class Members to secure their Private Information  
21 and ultimately breached that duty, as Plaintiff’s and Class Members’ Private Information was  
22 compromised, unlawfully accessed, and exfiltrated due to the Data Breach.

23 **B. Despite Its Promises, 23andMe Failed To Protect Plaintiff’s Private**  
24 **Information.**

25 43. Despite its promises, 23andMe and its employees failed to properly monitor the  
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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> 23andMe, *What you should know about privacy at 23andMe*, 23andMe, Inc.: Privacy overview, <https://www.23andme.com/legal/privacy/> (last visited Dec. 21, 2023).

<sup>18</sup> *Your privacy comes first*, 23andMe Inc.: Privacy, *supra* note 11.

<sup>19</sup> *Id.*

1 computer network and systems in which the Private Information of Plaintiff and Class Members  
2 was maintained, and 23andMe failed to detect and stop the Data Breach. Had 23andMe properly  
3 monitored its systems and employed appropriate security measures commensurate with the  
4 sensitivity of the Private Information, it would have either discovered the intrusion sooner or been  
5 able to prevent it entirely.

6 44. According to news reports, on or about August 11, 2023, “a hacker on a known  
7 cybercrime forum called Hydra advertised a set of 23andMe user data.”<sup>20</sup> The hacker claimed “to  
8 have 300 terabytes of stolen 23andMe user data” that it would sell for \$50 million, and offered to  
9 sell “a subset of data” for between \$1,000 and \$10,000.<sup>21</sup> The hacker also purportedly indicated  
10 that they had contacted 23andMe, ““but instead of taking the matter seriously, [the Company]  
11 asked irrelevant questions.””<sup>22</sup> At least one person saw the hacker’s August 11, 2023 post in the  
12 Hydra forum and sought to alert 23andMe users on an unofficial 23andMe user forum on Reddit  
13 that same day.<sup>23</sup>

14 45. For nearly two months, 23andMe did nothing in response to the August 11, 2023  
15 Hydra and Reddit posts, leaving Plaintiff and Class Members uninformed about the Data Breach,  
16 while their Private Information was for sale to criminals on the dark web, and unauthorized parties  
17 accessed and viewed Plaintiff’s and Class Members’ unencrypted, unredacted Private Information,  
18 including their highly sensitive genetic data.

19 46. In early October 2023, 23andMe user data misappropriated in the Data Breach  
20 appeared for sale on another hacking forum called BreachForums, including data that was claimed  
21 to come from “one million 23andMe users of Jewish Ashkenazi descent and 100,000 23andMe  
22 Chinese users.”<sup>24</sup> Subsequently, “the actor began selling what it claims are 23andMe profiles for  
23

24  
25 <sup>20</sup> Lorenzo Franceschi-Bicchierai et al., *Hackers advertised 23andMe stolen data two months*  
26 *ago*, TechCrunch (Oct. 10. 2023), [https://techcrunch.com/2023/10/10/hackers-advertised-  
23andme-stolen-data-two-months-ago/](https://techcrunch.com/2023/10/10/hackers-advertised-23andme-stolen-data-two-months-ago/).

27 <sup>21</sup> *Id.*

28 <sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

1 between \$1 and \$10 per account, depending on the scale of the purchase.”<sup>25</sup>

2 47. Defendant did not acknowledge or address the Data Breach until October 6, 2023,  
3 when it announced, via a blog post on its website (the “October 6 Blog Post”), that the Company  
4 had “recently learned that certain 23andMe customer profile information . . . was compiled from  
5 individual 23andMe.com accounts without the account users’ authorization” as a result of “threat  
6 actors” being able to “access certain accounts.”<sup>26</sup> The October 6 Blog Post attempted to shift  
7 responsibility to 23andMe users, expressing Defendant’s “belie[f]” that the Data Breach was the  
8 result of “threat actors [who] were able to access certain accounts in instances where users recycled  
9 login credentials—that is, usernames and passwords that were used on 23andMe.com were the  
10 same as those used on other websites that have been previously hacked.”<sup>27</sup>

11 48. 23andMe’s October 6 Blog Post did not provide any details on how many people  
12 were affected by the Data Breach and failed to mention that hackers had been selling 23andMe  
13 user data on the dark web for nearly two months because of the Data Breach.

14 49. While the October 6 Blog Post did not expressly indicate the scope of the Data  
15 Breach in terms of the numbers of users affected or recite the categories of Private Information  
16 that were exposed, compromised, and stolen by unauthorized third parties, the categories of  
17 information in the “DNA Relatives feature” referenced by Defendant include:

- 18 i. Names;
- 19 ii. Sex;
- 20 iii. Dates of Birth;
- 21 iv. Genetic Information that includes (but is not limited to);
  - 22 a. Maternal and Paternal Haplogroup results;
  - 23 b. Neanderthal Ancestry results;
- 24 v. Predicted relationships with genetic matches;

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26 <sup>25</sup> Lily Hay Newman, *23andMe User Data Stolen in Targeted Attack on Ashkenazi Jews*, Wired  
27 (Oct. 6, 2023, 5:53 PM), <https://www.wired.com/story/23andme-credential-stuffing-data-stolen/>.

28 <sup>26</sup> 23andMe Blog, *supra* note 2.

<sup>27</sup> *Id.*

- 1 vi. Ancestry reports;
- 2 vii. Ancestors' birth locations and family names;
- 3 viii. Family tree information;
- 4 ix. Profile pictures; and
- 5 x. Geographic location.<sup>28</sup>

6 50. The October 6 Blog Post, and subsequent updates thereto also do not include  
7 information about the cause of the Data Breach, the vulnerabilities exploited, and any remedial  
8 measures taken to ensure that such a breach does not occur again.

9 51. 23andMe updated its October 6 Blog Post on October 9, 2023 to report, among  
10 other things, that it had recently engaged a third-party forensic expert and was “working with  
11 federal law enforcement.”<sup>29</sup> Then, on October 20, 2023, 23andMe announced that it had  
12 temporarily disabled certain features on the DNA relatives tool. The October 6 Blog Post and the  
13 two subsequent updates thereto failed to provide basic details concerning the Data Breach,  
14 including whether the breach was a system-wide breach, how many people were affected by the  
15 Data Breach, and whether certain populations, ethnic groups, or other identifiable categories of  
16 individuals were targeted in the cyberattack.

17 52. On November 6, 2023, 23andMe updated its October 6 Blog Post to report that  
18 “[s]tarting today, we are requiring all customers to utilize 2-step verification (2SV) as an added  
19 layer of protection for their account.”<sup>30</sup>

20 53. On December 1, 2023, 23andMe again updated its October 6 Blog Post to report  
21 that “23andMe has completed its investigation, assisted by third-party forensic experts,” and is “in  
22 the process of notifying affected customers, as required by law.”<sup>31</sup>

23 54. Finally, on December 5, 2023, 23andMe again updated its October 6 Blog Post,  
24 stating that “[a]s our investigation comes to a close, we wanted to share the details of what took  
25

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26 <sup>28</sup> 23andMe Customer Care, *DNA Relatives Privacy & Display Settings*, 23andMe, Inc.,  
<https://customercare.23andme.com/hc/en-us/articles/212170838> (last visited Dec. 21, 2023).

27 <sup>29</sup> 23andMe Blog, *supra* note 2.

28 <sup>30</sup> *Id.*

<sup>31</sup> *Id.*

1 place and our findings,” including the following information.

2 The threat actor used the compromised accounts to access information shared with  
3 these accounts. Specifically, DNA Relatives profiles connected to these  
4 compromised accounts, which consist of information that a customer chooses to  
5 make available to their genetic relatives when they opt in to participate in  
6 23andMe’s DNA Relatives feature. A DNA Relatives profile includes information  
7 such as display name, predicted relationships, and percentage of DNA shared with  
8 matches. . . .

9 Additionally, through the compromised accounts, the threat actor accessed a feature  
10 called Family Tree, which includes a limited subset of DNA Relatives profile  
11 information. The Family Tree feature does not include ancestry information such  
12 as the percentage of DNA shared with genetic matches or ancestry reports.

13 **Additional Details**

- 14 • The threat actor was able to access less than 0.1%, or roughly 14,000 user  
15 accounts, of the existing 14 million 23andMe customers through credential  
16 stuffing.
- 17 • The threat actor used the compromised credential stuffed accounts to access  
18 the information included in a significant number of DNA Relatives profiles  
19 (approximately 5.5 million) and Family Tree feature profiles  
20 (approximately 1.4 million), each of which were connected to the  
21 compromised accounts.<sup>32</sup>

22 **C. 23andMe Compounded Its Failure By Providing Inadequate Notice.**

23 55. 23andMe’s notice to Plaintiff and Class Members was untimely and woefully  
24 deficient, failing to provide basic details concerning the Data Breach, including but not limited to  
25 how unauthorized third parties were able to access Private Information, what Private Information  
26 was in fact compromised, and how many people were affected by the Data Breach.

27 56. It is well-documented that:

28 [t]he quicker a financial institution, credit card issuer, wireless carrier or other  
service provider is notified that fraud has occurred on an account, the sooner these  
organizations can act to limit the damage. Early notification can also help limit the  
liability of a victim in some cases, as well as allow more time for law enforcement  
to catch the fraudsters in the act.<sup>33</sup>

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<sup>32</sup> *Id.*

<sup>33</sup> Javelin Strategy & Research, *Identity Fraud Hits Record High with 15.4 Million U.S. Victims in 2016, Up 16 Percent According to New Javelin Strategy & Research Study*, Business Wire



1           57. Here, the same applies to 23andMe and the unauthorized access to Plaintiff's and  
2 Class Members' accounts.

3           58. Indeed, once a data breach has occurred,

4 [o]ne thing that does matter is hearing about a data breach quickly. That alerts  
5 consumers to keep a tight watch on credit card bills and suspicious emails. It can  
6 prompt them to change passwords and freeze credit reports. And notifying officials  
7 can help them catch cybercriminals and warn other businesses of emerging dangers  
8 . . . If consumers don't know about a breach because it wasn't reported, they can't  
9 take action to protect themselves.<sup>34</sup>

10           59. Although their Private Information was improperly exposed on or before August  
11 11, 2023, Plaintiff and Class Members were not notified until October 6, 2023. 23andMe's delay  
12 deprived Plaintiff and Class Members of the ability to promptly mitigate potential adverse  
13 consequences resulting from the Data Breach.

14           60. As a result of 23andMe's delay in detecting and notifying individuals of the Data  
15 Breach, the risk of fraud for Plaintiff and Class Members has been driven even higher, a warning  
16 state Attorneys General have alluded to when questioning 23andMe about its "unreasonable delay"  
17 in notifying affected consumers about the Data Breach.<sup>35</sup>

18           61. 23andMe's efforts to notify Plaintiff and Class Members thus fell short of providing  
19 key information about the Data Breach, consisting of brief messages with little substantive  
20 information that failed to sufficiently warn victims to take action to protect themselves from  
21 identity theft and fraud.

22           62. 23andMe's deficient notices compounded the harm suffered by Plaintiff and Class  
23 Members, by failing to timely provide Breach victims with the very details necessary to protect  
24 themselves.

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25 (Feb. 1, 2017), <https://www.businesswire.com/news/home/20170201005166/en/Identity-Fraud-Hits-Record-High-15.4-Million>.

26 <sup>34</sup> Allen St. John, *The Data Breach Next Door*, Consumer Reports (Jan. 31, 2019),  
<https://www.consumerreports.org/data-theft/the-data-breach-next-door/>.

27 <sup>35</sup> William Tong, Att'y Gen. of Connecticut, Letter to Jacquie Cooke, General Counsel and  
28 Privacy Officer for 23andMe re: Data Breach (Oct. 30, 2023), [https://portal.ct.gov/-/media/AG/Press\\_Releases/2023/10-30-2023-William-Tong--23andMe-Inquiry-Letter-final-002.pdf](https://portal.ct.gov/-/media/AG/Press_Releases/2023/10-30-2023-William-Tong--23andMe-Inquiry-Letter-final-002.pdf).

1           **D.     23andMe Failed To Comply With Regulatory Guidance and Industry-**  
2           **Standard Cybersecurity Practices.**

3           63.     23andMe’s Data Breach is attributable to its failure to comply with state and federal  
4 laws and requirements as well as industry standards governing the protection of PII and PHI.

5           64.     For example, at least 24 states have enacted laws addressing data security practices  
6 that require that businesses that own, license or maintain PII to implement and maintain  
7 “reasonable security procedures and practices” and to protect PII from unauthorized access.  
8 California is one such state and requires that “[a] business that owns, licenses, or maintains  
9 personal information about a California resident shall implement and maintain reasonable security  
10 procedures appropriate to the nature of the information, to protect the personal information from  
11 unauthorized access, destruction, use modification or disclosure.” Cal. Civ. Code § 1798.81.5(b).

12           65.     23andMe also failed to comply with Federal Trade Commission (“FTC”) guidance  
13 on protecting PII and industry-standard cybersecurity practices. Section 5 of the FTC Act, 15  
14 U.S.C. § 45, prohibits “unfair . . . practices in or affecting commerce,” including, as interpreted by  
15 the FTC, failing to use reasonable measures to protect PII by companies like Defendant. Several  
16 publications by the FTC outline the importance of implementing reasonable security systems to  
17 protect data. The FTC has made clear that protecting sensitive customer data should factor into  
18 virtually all business decisions.

19           66.     The FTC recommends, among other things:

- 20           • limiting access to customer information to those who have a legitimate business  
21 need for it;
- 22           • encrypting customer information on system and in transit;
- 23           • implementing multi-factor authentication for anyone accessing customer  
24 information;
- 25           • implementing procedures and controls to monitor when authorized users are  
26 accessing customer information;
- 27           • maintaining up-to-date and appropriate programs and controls to prevent  
28 unauthorized access to customer information; and



1 a hacker is trying to penetrate the system; monitor for the transmission of large amounts of data  
2 from the system; and develop a plan to respond effectively to a data breach in the event one occurs.

3 71. The FTC has brought enforcement actions against businesses for failing to  
4 adequately and reasonably protect customer data, treating the failure to employ reasonable and  
5 appropriate measures to protect against unauthorized access to confidential consumer data as an  
6 unfair act or practice prohibited by Section 5 of the FTC Act. Orders resulting from these actions  
7 further clarify the measures businesses must take to meet their data security obligations.

8 72. The FTC has interpreted Section 5 of the FTC Act to encompass failures to  
9 appropriately store and maintain personal data.

10 73. 23andMe was aware of its obligations to protect its customers' PII and privacy  
11 before and during the Data Breach yet failed to take reasonable steps to protect customers' PII  
12 from unauthorized access. In this case, 23andMe was at all times fully aware of its obligation to  
13 protect the PII of its customers. 23andMe was also aware of the significant repercussions if it failed  
14 to do so because 23andMe collected PII from millions of consumers and it knew that this PII, if  
15 hacked, would result in injury to consumers, including Plaintiff and Class Members.

16 74. Based upon the known details of the Data Breach and how it occurred, 23andMe  
17 also failed to fully comply with industry-standard cybersecurity practices, including, but not  
18 limited to rate limiting, user-activity monitoring, and data-loss prevention.

19 75. Defendant is also a covered Business Associate under HIPAA (45 C.F.R. §  
20 160.103) and is required to comply with the HIPAA Privacy Rule and Security Rule, 45 C.F.R.  
21 Part 160 and Part 164, Subparts A and E ("Standards for Privacy of Individually Identifiable Health  
22 Information"), and Security Rule ("Security Standards for the Protection of Electronic Protected  
23 Health Information"), 45 C.F.R. Part 160 and Part 164, Subparts A and C.

24 76. Defendant is subject to the rules and regulations for safeguarding electronic forms  
25 of medical information pursuant to the Health Information Technology Act ("HITECH").<sup>39</sup> See 42  
26 U.S.C. §17921, 45 C.F.R. § 160.103.

27 \_\_\_\_\_  
28 <sup>39</sup> HIPAA and HITECH work in tandem to provide guidelines and rules for maintaining  
protected health information. HITECH references and incorporates HIPAA.

1           77.     HIPAA’s Privacy Rule or Standards for Privacy of Individually Identifiable Health  
2 Information establishes national standards for the protection of health information.

3           78.     HIPAA’s Privacy Rule or Security Standards for the Protection of Electronic  
4 Protected Health Information establishes a national set of security standards for protecting health  
5 information that is kept or transferred in electronic form.

6           79.     HIPAA requires “compl[iance] with the applicable standards, implementation  
7 specifications, and requirements” of HIPAA “with respect to electronic protected health  
8 information.” 45 C.F.R. § 164.302.

9           80.     “Electronic protected health information” is “individually identifiable health  
10 information . . . that is (i) transmitted by electronic media; maintained in electronic media.” 45  
11 C.F.R. § 160.103.

12           81.     HIPAA’s Security Rule requires Defendant to do the following:

- 13           a.     Ensure the confidentiality, integrity, and availability of all electronic  
14 protected health information the covered entity or business associate  
15 creates, receives, maintains, or transmits;
- 16           b.     Protect against any reasonably anticipated threats or hazards to the security  
17 or integrity of such information;
- 18           c.     Protect against any reasonably anticipated uses or disclosures of such  
19 information that are not permitted; and
- 20           d.     Ensure compliance by its workforce.

21           82.     HIPAA also requires Defendant to “review and modify the security measures  
22 implemented . . . as needed to continue provision of reasonable and appropriate protection of  
23 electronic protected health information.” 45 C.F.R. § 164.306(e). Additionally, Defendant is  
24 required under HIPAA to “[i]mplement technical policies and procedures for electronic  
25 information systems that maintain electronic protected health information to allow access only to  
26 those persons or software programs that have been granted access rights.” 45 C.F.R. §  
27 164.312(a)(1).

28           83.     HIPAA and HITECH also obligated 23andMe to implement policies and

1 procedures to prevent, detect, contain, and correct security violations, and to protect against uses  
2 or disclosures of electronic protected health information that are reasonably anticipated but not  
3 permitted by the privacy rules. See 45 C.F.R. § 164.306(a)(1) and § 164.306(a)(3); see also 42  
4 U.S.C. §17902.

5 84. The HIPAA Breach Notification Rule, 45 C.F.R. §§ 164.400-414, also requires  
6 23andMe to provide notice of the Data Breach to each affected individual “without unreasonable  
7 delay and in no case later than 60 days following the discovery of a breach.”<sup>40</sup>

8 85. HIPAA requires a covered entity to have and apply appropriate sanctions against  
9 members of its workforce who fail to comply with the privacy policies and procedures of the  
10 covered entity or the requirements of 45 C.F.R. Part 164, Subparts D or E. See 45 C.F.R.  
11 § 164.530(e).

12 86. HIPAA requires a covered entity to mitigate, to the extent practicable, any harmful  
13 effect that is known to the covered entity of a use or disclosure of protected health information in  
14 violation of its policies and procedures or the requirements of 45 C.F.R. Part 164, Subpart E by  
15 the covered entity or its business associate. See 45 C.F.R. § 164.530(f).

16 87. HIPAA also requires the Office of Civil Rights (“OCR”) within the Department of  
17 Health and Human Services (“HHS”) to issue annual guidance documents on the provisions in the  
18 HIPAA Security Rule. *See* 45 C.F.R. §§ 164.302-164.318. For example, “HHS has developed  
19 guidance and tools to assist HIPAA covered entities in identifying and implementing the most cost  
20 effective and appropriate administrative, physical, and technical safeguards to protect the  
21 confidentiality, integrity, and availability of e-PHI and comply with the risk analysis requirements  
22 of the Security Rule.”<sup>41</sup> The list of resources includes a link to guidelines set by the National  
23 Institute of Standards and Technology (NIST), which OCR says “represent the industry standard  
24  
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26 <sup>40</sup> Breach Notification Rule, U.S. Dep’t of Health & Human Servs. (July 26, 2013),  
27 <https://www.hhs.gov/hipaa/for-professionals/breach-notification/index.html> (emphasis added).

28 <sup>41</sup> Security Rule Guidance Material, U.S. Dep’t of Health & Human Servs. (Oct. 18, 2023),  
<http://www.hhs.gov/hipaa/for-professionals/security/guidance/index.html>.

1 for good business practices with respect to standards for securing e-PHI.”<sup>42</sup>

2 **E. The Effect of the Data Breach on Plaintiff and Class Members.**

3 88. 23andMe’s failure to keep Plaintiff’s and Class Members’ Private Information  
4 secure has severe ramifications. Given the sensitive nature of the Private Information stolen in the  
5 Data Breach—including name, sex, date of birth, genetic information, predicted relationships with  
6 genetic matches, ancestry reports, ancestors’ birth locations and family names, family tree  
7 information, profile pictures, and geographic location—cybercriminals can commit identity theft,  
8 financial fraud, and other identity-related fraud against Plaintiff and Class Members now and into  
9 the indefinite future. As a result, Plaintiff has suffered injury and faces an imminent and substantial  
10 risk of further injury, including actual or attempted identity theft, fraud, or related cybercrimes due  
11 to the Data Breach.

12 89. Armed with the Private Information accessed in the Data Breach, data thieves can  
13 use that data to commit a variety of crimes, including using Class Members’ genetic, health, and  
14 ethnic information to target other phishing and hacking intrusions based upon their individual  
15 health needs or ethnic backgrounds. Moreover, data thieves or malicious actors who may have  
16 purchased or otherwise obtained Private Information from those who stole it may use that data to  
17 target Plaintiff and Class Members with violence or threats of harm based on animus toward  
18 members of particular ethnic groups. Indeed, the fact that initial leaks of Private Information stolen  
19 in the Data Breach and “advertised [for sale] on BreachForums allegedly contain one million  
20 23andMe users of Jewish Ashkenazi descent and 100,000 23andMe Chinese users”<sup>43</sup> has prompted  
21 at least one State Attorney General to observe that “the increased frequency of antisemitic and  
22 anti-Asian rhetoric and violence in recent years means that this may be a particularly dangerous  
23 time for such targeted information to be released to the public.”<sup>44</sup>

24 90. Further, malicious actors often wait months or years to use the PII and/or PHI

25 <sup>42</sup> Guidance on Risk Analysis, U.S. Dep’t of Health & Human Servs. (July 22, 2019),  
26 [https://www.hhs.gov/hipaa/for-professionals/security/guidance/guidance-risk-  
analysis/index.html](https://www.hhs.gov/hipaa/for-professionals/security/guidance/guidance-risk-analysis/index.html).

27 <sup>43</sup> Lorenzo Franceschi-Bicchierai et al., *Hackers advertised 23andMe stolen data two months*  
28 *ago*, *supra* note 20.

<sup>44</sup> William Tong Letter (Oct. 30, 2023), *supra* note 31.

1 obtained in data breaches, as victims often become complacent and less diligent in monitoring  
2 their accounts after a significant period has passed. These bad actors will also re-use stolen PII  
3 and/or PHI, meaning individuals can be the victim of several instances of identity theft, fraud, or  
4 other cybercrimes stemming from a single data breach. Moreover, although elements of some  
5 Plaintiff's and Class Members' data may have been compromised in other data breaches, the fact  
6 that the Breach centralizes the PII and/or PHI and identifies the victims as 23andMe's customers  
7 materially increases the risk to Plaintiff and the Class.

8 91. The U.S. Government Accountability Office determined that "stolen data may be  
9 held for up to a year or more before being used to commit identity theft," and that "once stolen  
10 data have been sold or posted on the Web, fraudulent use of that information may continue for  
11 years."<sup>45</sup> Moreover, there is often significant lag time between when a person suffers harm due to  
12 theft of their PII and when they discover the harm. Plaintiff will therefore need to spend time and  
13 money to continuously monitor her accounts for years to ensure her PII obtained in the Data Breach  
14 is not used to harm her. Plaintiff and Class Members thus have been harmed in the amount of the  
15 actuarial present value of ongoing high-quality identity defense and credit monitoring services  
16 made necessary as mitigation measures because of 23andMe's Data Breach. In other words,  
17 Plaintiff has been harmed by the value of identity protection services she must purchase in the  
18 future to ameliorate the risk of harm she now faces due to the Data Breach.

19 92. As such, these harms are ongoing, and Plaintiff and Class Members will suffer from  
20 future damages associated with the unauthorized use and misuse of their Private Information, as  
21 data thieves and malicious actors who purchase the stolen Private Information will continue to use  
22 the information to the detriment of Plaintiff and Class Members for many years to come.

23 93. As a direct result of the Data Breach, Plaintiff and Class Members have suffered  
24 actual and attempted identity theft and fraud, and they will continue to be exposed to a heightened  
25 and imminent risk of identity theft and fraud, potentially for the rest of their lives. Plaintiff and  
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27 <sup>45</sup> U.S. Gov't Accountability Off., *Data Breaches Are Frequent, but Evidence of Resulting*  
28 *Identity Theft Is Limited; However, the Full Extent Is Unknown*, GAO-07-737, at 29 (June  
2007), <https://www.gao.gov/assets/gao-07-737.pdf>.



1 Class Members must now and in the future closely monitor their medical, insurance, and financial  
2 accounts to guard against identity theft and fraud.

3 94. For this reason, Class Members may incur out-of-pocket costs for purchasing  
4 protective measures to deter and detect identity theft and fraud, as well as protective measures to  
5 mitigate against the misuse of their genetic information and related Private Information.

6 95. As a direct and proximate result of the Data Breach and subsequent exposure of  
7 their Private Information, Plaintiff and Class Members have suffered, and will continue to suffer,  
8 damages and economic losses in the form of lost time needed to take appropriate measures to avoid  
9 the misuse of their Private Information, potential unauthorized and fraudulent charges, and dealing  
10 with spam phone calls, letters, text messages, and emails received as a result of the Data Breach  
11 and the unauthorized disclosure and misuse of their Private Information.

12 96. Plaintiff and Class Members have also realized harm in the lost or reduced value of  
13 their Private Information. Plaintiff's Private Information is not only valuable to 23andMe, but  
14 Plaintiff also places high value on her Private Information based on her understanding that her  
15 Private Information is a financial asset to companies that collect it.<sup>46</sup>

16 97. Plaintiff and Class Members have also been harmed and damaged in the amount of  
17 the market value of the hacker's access to Plaintiff's Private Information that was permitted  
18 without authorization by 23andMe. This market value for access to PII and/or PHI can be  
19 determined by reference to both legitimate and illegitimate markets for such information.

20 98. Moreover, Plaintiff and Class Members value the privacy of this information and  
21 expect 23andMe to allocate enough resources to ensure it is adequately protected. Plaintiff and  
22 other customers would not have done business with 23andMe, provided their Private Information,  
23 or paid the same prices for 23andMe's goods and services had they known 23andMe did not  
24 implement reasonable security measures to protect their Private Information. Customers

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25 <sup>46</sup> See, e.g., Ponemon Institute, LLC, *Privacy and Security in a Connected Life: A Study of US,*  
26 *European and Japanese Consumers*, at 14 (Mar. 2015) (explaining that 53% of respondents  
27 "believe personal data is a financial asset similar to traded goods, currencies or commodities"  
28 and valuing, as but one example, their Social Security number at \$55.70),  
<https://docplayer.net/836701-Privacy-and-security-in-a-connected-life-a-study-of-us-european-and-japanese-consumers.html>.

1 reasonably expect that the payments they made to 23andMe incorporate the costs to implement  
2 reasonable security measures to protect their Private Information. As a result, Plaintiff and Class  
3 Members did not receive the benefit of their bargain with 23andMe because they paid a value for  
4 services they expected but did not receive.

5 99. Given 23andMe's failure to protect Plaintiff's and the Class Members' Private  
6 Information, Plaintiff has a significant and cognizable interest in obtaining injunctive and equitable  
7 relief (in addition to any monetary damages, restitution, or disgorgement) that protects her from  
8 suffering further harm, as her Private Information remains in 23andMe's possession. Accordingly,  
9 this action represents the enforcement of an important right affecting the public interest and will  
10 confer a significant benefit on a large class of persons.

11 100. In sum, Plaintiff and Class Members were injured as follows: (i) theft of their  
12 Private Information and the resulting loss of privacy rights in that information; (ii) improper  
13 disclosure of their Private Information; (iii) loss of value of their Private Information; (iv) the lost  
14 value of access to Plaintiff's and Class Members' Private Information permitted by 23andMe;  
15 (v) the amount of the actuarial present value of ongoing high-quality identity defense and credit  
16 monitoring services made necessary as mitigation measures because of 23andMe's Data Breach;  
17 (vi) 23andMe's retention of profits attributable to Plaintiff's and Class Members' Private  
18 Information that 23andMe failed to adequately protect; (vii) the certain, imminent, and ongoing  
19 threat of fraud and identity theft, including the economic and non-economic impacts that flow  
20 therefrom; (viii) ascertainable out-of-pocket expenses and the value of their time allocated to fixing  
21 or mitigating the effects of the Data Breach; (ix) overpayments to 23andMe for services purchased,  
22 as Plaintiff reasonably believed a portion of the sale price would fund reasonable security measures  
23 that would protect her PII, which was not the case; and (x) nominal damages.

## 24 VI. CLASS ACTION ALLEGATIONS

### 25 A. NATIONWIDE CLASS

26 101. Pursuant to Fed. R. Civ. P. 23(b)(2) and (b)(3), as applicable, and (c)(4), Plaintiff  
27 seeks certification of the following nationwide class (the "Nationwide Class" or the "Class"):  
28

1           **All natural persons residing in the United States whose Private Information was**  
2           **exfiltrated in the Data Breach.**

3           102. The Nationwide Class asserts claims against 23andMe for negligence (Count 1),  
4 negligence per se (Count 2), breach of implied contract (Count 3), unjust enrichment (Count 4),  
5 and declaratory judgment (Count 5).

6           **B. WASHINGTON SUBCLASS**

7           103. Pursuant to Fed. R. Civ. P. 23(b)(2) and (b)(3), as applicable, and (c)(4), Plaintiff  
8 seeks certification of a Washington Subclass in the alternative to the nationwide claims (Counts 1  
9 through 5), as well as with respect to statutory claims under the Washington Data Breach Notice  
10 Act, Wash. Rev. Code §§ 19.255.010, *et seq.* (Count 6), and the Washington Consumer Protection  
11 Act, Wash. Rev. Code Ann. §§ 19.86.020, *et seq.* (Count 7), on behalf of a Washington Subclass,  
12 defined as follows:

13           **All natural persons residing in Washington whose Private Information was**  
14           **exfiltrated in the Data Breach.**

15           104. Excluded from the Nationwide Class and the Washington Subclass (collectively,  
16 the “Class”) are 23andMe, any entity in which 23andMe has a controlling interest, and 23andMe’s  
17 officers, directors, legal representatives, successors, subsidiaries, and assigns. Also excluded from  
18 the Class are any judicial officer presiding over this matter, members of their immediate family,  
19 and members of their judicial staff.

20           105. **Numerosity: Federal Rule of Civil Procedure 23(a)(1).** The members of the  
21 Nationwide Class and the Washington Subclass are so numerous and geographically dispersed that  
22 individual joinder of all Class Members is impracticable. While the exact number of Class  
23 Members is unknown to Plaintiff at this time, 23andMe has acknowledged that millions of  
24 individuals’ PII has been compromised. Those individuals’ names and addresses are available from  
25 23andMe’s records, and Class Members may be notified of the pendency of this action by  
26 recognized, Court-approved notice dissemination methods. On information and belief, there are at  
27 least thousands of individuals in the Nationwide Class and at least thousands of individuals in the  
28 Washington Statewide Subclass, making joinder of all Class Members impracticable.

1           106.   **Commonality and Predominance: Federal Rules of Civil Procedure 23(a)(2)**  
2 **and 23(b)(3).** As to both the Nationwide Class and the Washington Subclass, this action involves  
3 common questions of law and fact, which predominate over any questions affecting individual  
4 Class Members. The common questions include:

- 5           1.     Whether 23andMe had a duty to protect Private Information;
- 6           2.     Whether 23andMe failed to take reasonable and prudent security measures  
7           to ensure the Private Information it maintains was protected;
- 8           3.     Whether 23andMe failed to take available steps to prevent and stop the  
9           Data Breach from happening;
- 10          4.     Whether 23andMe knew or should have known that the Private  
11          Information it maintains was vulnerable to compromise;
- 12          5.     Whether 23andMe was negligent in failing to implement reasonable and  
13          adequate security procedures and practices;
- 14          6.     Whether 23andMe’s security measures to protect the Private Information  
15          it maintains were reasonable in light known legal requirements;
- 16          7.     Whether 23andMe’s conduct constituted unfair or deceptive trade  
17          practices;
- 18          8.     Whether 23andMe violated state or federal law when it failed to  
19          implement reasonable security procedures and practices;
- 20          9.     Which security procedures and notification procedures 23andMe should  
21          be required to implement;
- 22          10.    Whether 23andMe has a contractual obligation to provide for the security  
23          of customer Private Information;
- 24          11.    Whether 23andMe has complied with any contractual obligations to  
25          protect customer Private Information;
- 26          12.    What security measures, if any, must be implemented by 23andMe to  
27          comply with its contractual obligations;
- 28          13.    Whether 23andMe violated state consumer protection laws in connection  
            with the actions described herein;
14.    Whether 23andMe failed to notify Plaintiff and Class Members as soon as  
            practicable and without delay after the Data Breach was discovered;
15.    Whether 23andMe’s conduct resulted in or was the proximate cause of the  
            loss of the Private Information of Plaintiff and Class Members;
16.    Whether Plaintiff and Class Members were injured and suffered damages  
            or other losses because of 23andMe’s failure to reasonably protect their  
            Private Information;

- 1 17. Whether 23andMe should retain the money paid by Plaintiff and Class  
2 Members to protect their Private Information, and the profits 23andMe  
3 generated through Plaintiff's and Class Members' Private Information;
- 4 18. Whether and how 23andMe should retain Plaintiff's and Class Members'  
5 valuable Private Information; and,
- 6 19. Whether Plaintiff and Class Members are entitled to damages or injunctive  
7 relief.

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107. **Typicality: Federal Rule of Civil Procedure 23(a)(3).** As to the Nationwide Class and the Washington Subclass, Plaintiff's claims are typical of other Class Members' claims because Plaintiff and Class Members were subjected to the same allegedly unlawful conduct and damaged in the same way. Plaintiff's Private Information was in 23andMe's possession at the time of the Data Breach and was compromised as a result of the Data Breach. Plaintiff's damages and injuries are akin to those of other Class Members, and Plaintiff seeks relief consistent with the relief of the Class.

108. **Adequacy of Representation: Federal Rule of Civil Procedure 23(a)(4).** Consistent with Rule 23(a)(4), Plaintiff is an adequate representative of the Nationwide Class and the Washington Subclass because Plaintiff is a member of the Nationwide Class and the Washington Subclass and is committed to pursuing this matter against Defendant to obtain relief for the Class. Plaintiff has no conflicts of interest with the Class. Plaintiff's Counsel are competent and experienced in litigating class actions, including extensive experience in data breach and privacy litigation. Plaintiff intends to vigorously prosecute this case and will fairly and adequately protect the Class's interests.

109. **Predominance & Superiority. Fed. R. Civ. P. 23(b)(3).** Consistent with Rule 23(b)(3), a class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. Common issues in this litigation also predominate over individual issues because those issues discussed in the above paragraph on commonality are more important to the resolution of this litigation than any individual issues. The purpose of the class action mechanism is to permit litigation against wrongdoers even when damages to individual plaintiffs

1 may not be sufficient to justify individual litigation. Here, the damages suffered by Plaintiff and  
2 the Class are relatively small compared to the burden and expense required to individually litigate  
3 their claims against 23andMe, and thus, individual litigation to redress 23andMe's wrongful  
4 conduct would be impracticable. Individual litigation by each Class Member would also strain the  
5 court system. Individual litigation creates the potential for inconsistent or contradictory judgments  
6 and increases the delay and expense to all parties and the court system. By contrast, the class action  
7 device presents far fewer management difficulties and provides the benefits of a single  
8 adjudication, economies of scale, and comprehensive supervision by a single court.

9       **110. Risk of Prosecuting Separate Actions.** This case is appropriate for certification  
10 because prosecuting separate actions by individual proposed Class Members would create the risk  
11 of inconsistent adjudications and incompatible standards of conduct for 23andMe or would be  
12 dispositive of the interests of members of the proposed Class.

13       **111. Ascertainability.** The Nationwide Class and Washington Subclass are defined by  
14 reference to objective criteria, and there is an administratively feasible mechanism to determine  
15 who fits within the Class. The Nationwide Class and Washington Subclass consist of individuals  
16 who provided their Private Information to 23andMe. Class Membership can be determined using  
17 23andMe's records.

18       **112. Injunctive and Declaratory Relief.** Class certification is also appropriate under  
19 Rule 23(b)(2) and (c). 23andMe, through its uniform conduct, acted or refused to act on grounds  
20 generally applicable to the Class as a whole, making injunctive relief appropriate to the Class as a  
21 whole. Injunctive relief is necessary to uniformly protect the Class Members' data. Plaintiff seeks  
22 prospective injunctive relief as a wholly separate remedy from any monetary relief.

23       **113.** Likewise, particular issues under Rule 23(c)(4) are appropriate for certification  
24 because such claims present only particular, common issues, the resolution of which would  
25 advance the disposition of this matter and the parties' interests therein.

1                                   **VII. CLAIMS ON BEHALF OF THE NATIONWIDE CLASS**

2   **COUNT ONE — NEGLIGENCE**

3   **On Behalf of Plaintiff and the Nationwide Class,**  
4   **or Alternatively, on Behalf of Plaintiff and the Washington Subclass**

5                   114. Plaintiff repeats and realleges the allegations contained in the Statement of Facts as  
6 if fully set forth herein.

7                   115. 23andMe required Plaintiff and Class Members to submit sensitive Private  
8 Information in order to obtain its services.

9                   116. 23andMe owed a duty to Plaintiff and Class Members to exercise reasonable care  
10 in obtaining, retaining, securing, safeguarding, deleting and protecting their Private Information in  
11 its possession from being compromised, lost, stolen, accessed or misused by unauthorized persons.  
12 More specifically, this duty included, among other things: (a) designing, maintaining, and testing  
13 23andMe's security systems to ensure that Plaintiff's and Class Members' Private Information in  
14 23andMe's possession was adequately secured and protected; (b) implementing processes that  
15 would detect unauthorized access to the Private Information it maintains in a timely manner;  
16 (c) timely acting upon warnings and alerts, including those generated by its own security systems,  
17 regarding unauthorized access to the Private Information it maintains; and (d) maintaining data  
18 security measures consistent with industry standards.

19                   117. 23andMe's duty to use reasonable care arose from several sources, including but  
20 not limited to those described herein.

21                   118. 23andMe had common law duties to prevent foreseeable harm to Plaintiff and the  
22 Class Members. These duties existed because Plaintiff and Class Members were the foreseeable  
23 and probable victims of any inadequate security practices. Not only was it foreseeable that Plaintiff  
24 and Class Members would be harmed by 23andMe's failure to protect their Private Information  
25 because hackers routinely attempt to steal such information and use it for nefarious purposes,  
26 23andMe knew that it was more likely than not Plaintiff and other Class Members would be  
27 harmed if it allowed such a breach.

28                   119. 23andMe's duty to use reasonable security measures also arose as a result of the

1 special relationship that existed between 23andMe, on the one hand, and Plaintiff and Class  
2 Members, on the other hand. The special relationship arose because Plaintiff and Class Members  
3 entrusted 23andMe with their highly sensitive Private Information as part of the purchase of the  
4 services 23andMe offers. 23andMe alone could have ensured that its security systems and data  
5 storage architecture were sufficient to prevent or minimize the Data Breach.

6 120. 23andMe’s duty also arose under Section 5 of the Federal Trade Commission Act  
7 (“FTC Act”), 15 U.S.C. § 45, which prohibits “unfair . . . practices in or affecting commerce,”  
8 including, as interpreted and enforced by the FTC, the unfair practice of failing to use reasonable  
9 measures to protect Private Information by companies such as 23andMe. Various FTC publications  
10 and data security breach orders further form the basis of 23andMe’s duty. In addition, individual  
11 states have enacted statutes based upon the FTC Act that also created a duty.

12 121. 23andMe’s duty also arose from 23andMe’s superior position to protect against the  
13 harm suffered by Plaintiff and Class Members as a result of the 23andMe Data Breach.

14 122. 23andMe admits that it has a responsibility to protect the Private Information with  
15 which it is entrusted.

16 123. 23andMe knew or should have known that its data storage architecture were  
17 vulnerable to unauthorized access and targeting by cybercriminals for the purpose of stealing and  
18 misusing confidential Private Information.

19 124. 23andMe also had a duty to safeguard the Private Information of Plaintiff and Class  
20 Members and to promptly notify them of a breach because of state laws and statutes that require  
21 23andMe to reasonably safeguard sensitive Private Information, as detailed herein.

22 125. Timely, adequate notification was required, appropriate and necessary so that,  
23 among other things, Plaintiff and Class Members could take appropriate measures to freeze or lock  
24 their credit profiles, avoid or mitigate identity theft or fraud, cancel or change usernames and  
25 passwords on compromised accounts, monitor their account information and credit reports for  
26 fraudulent activity, obtain credit monitoring services, and take other steps to mitigate or ameliorate  
27 the damages caused by 23andMe’s misconduct.

28 126. 23andMe breached the duties it owed to Plaintiff and Class Members described



1 above and thus was negligent. 23andMe breached these duties by, among other things, failing to:  
2 (a) exercise reasonable care and implement adequate security systems, protocols, and practices  
3 sufficient to protect the Private Information of Plaintiff and Class Members; (b) detect the Data  
4 Breach while it was ongoing; (c) maintain security systems consistent with industry standards  
5 during the period of the Data Breach; (d) comply with regulations protecting the Private  
6 Information at issue during the period of the Data Breach; and (e) disclose in a timely and adequate  
7 manner that Plaintiff's and the Class Members' Private Information in 23andMe's possession had  
8 been or was reasonably believed to have been, stolen or compromised.

9 127. But for 23andMe's wrongful and negligent breach of its duties owed to Plaintiff  
10 and Class Members, their Private Information would not have been compromised.

11 128. 23andMe's failure to take proper security measures to protect the sensitive Private  
12 Information of Plaintiff and Class Members created conditions conducive to a foreseeable,  
13 intentional act, namely the unauthorized access of Plaintiff's and Class Members' Private  
14 Information.

15 129. Plaintiff and Class Members were foreseeable victims of 23andMe's inadequate  
16 data security practices, and it was also foreseeable that 23andMe's failure to provide timely and  
17 adequate notice of the Data Breach would result in injury to Plaintiff and Class Members as  
18 described in this Complaint.

19 130. As a direct and proximate result of 23andMe's negligence, Plaintiff and Class  
20 Members have been injured and are entitled to damages in an amount to be proven at trial. Such  
21 injuries include one or more of the following: ongoing, imminent, certainly impending threat of  
22 identity theft crimes, fraud, and other misuse, resulting in monetary loss and economic harm; actual  
23 identity theft crimes, fraud, and other misuse, resulting in monetary loss and economic harm; loss  
24 of the value of their privacy and the confidentiality of the stolen Private Information; illegal sale  
25 of the compromised Private Information on the black market; mitigation expenses and time spent  
26 on credit monitoring, identity theft insurance, and credit freezes and unfreezes; time spent in  
27 response to the Data Breach reviewing bank statements, credit card statements, and credit reports,  
28 among other related activities; expenses and time spent initiating fraud alerts; decreased credit

1 scores and ratings; lost work time; lost value of the Private Information; lost value of access to  
2 their Private Information permitted by 23andMe; the amount of the actuarial present value of  
3 ongoing high-quality identity defense and credit monitoring services made necessary as mitigation  
4 measures because of 23andMe’s Data Breach; lost benefit of their bargains and overcharges for  
5 services or products; nominal and general damages and other economic and non-economic harm.

6  
7 **COUNT TWO — NEGLIGENCE *PER SE***

8 **On Behalf of Plaintiff and the Nationwide Class,  
9 or Alternatively, on Behalf of Plaintiff and the Washington Subclass**

10 131. Plaintiff repeats and realleges the allegations contained in the Statement of Facts as  
11 if fully set forth herein.

12 132. Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, prohibits  
13 “unfair . . . practices in or affecting commerce” including, as interpreted and enforced by the  
14 Federal Trade Commission (“FTC”), the unfair act or practice by companies such as 23andMe of  
15 failing to use reasonable measures to protect Private Information.

16 133. The FTC publications and orders also form the basis of 23andMe’s duty.

17 134. 23andMe violated Section 5 of the FTC Act by failing to use reasonable measures  
18 to protect Private Information and not complying with applicable industry standards. 23andMe’s  
19 conduct was particularly unreasonable given the nature and amount of Private Information it  
20 obtained, stored, and disseminated, and the foreseeable consequences of a data breach involving  
21 the highly sensitive Private Information it maintains, including specifically the damages that would  
22 result to Plaintiff and Class Members.

23 135. In addition, under state data security statutes, 23andMe had a duty to implement  
24 and maintain reasonable security procedures and practices to safeguard Plaintiff’s and Class  
25 Members’ Private Information.

26 136. 23andMe’s violation of Section 5 of the FTC Act (and similar state statutes)  
27 constitutes negligence per se.

28 137. Plaintiff and Class Members are consumers within the class of persons Section 5 of  
the FTC Act was intended to protect.

1           138. The harm that has occurred is the type of harm the FTC Act was intended to guard  
2 against. The FTC has pursued enforcement actions against businesses that, as a result of their  
3 failure to employ reasonable data security measures and avoid unfair and deceptive practices,  
4 caused the same harm as that suffered by Plaintiff and the Class.

5           139. 23andMe breached its duties to Plaintiff and Class Members under the FTC Act  
6 and state data security statutes by failing to provide fair, reasonable, or adequate data security  
7 practices to safeguard Plaintiff's and Class Members' Private Information.

8           140. Plaintiff and Class Members were foreseeable victims of 23andMe's violations of  
9 the FTC Act and state data security statutes. 23andMe knew or should have known that its failure  
10 to implement reasonable measures to protect and secure Plaintiff's and Class Members' Private  
11 Information would cause damage to Plaintiff and Class Members.

12           141. But for 23andMe's violation of the applicable laws and regulations, Plaintiff's and  
13 Class Members' Private Information would not have been accessed by unauthorized parties.

14           142. As a direct and proximate result of 23andMe's negligence per se, Plaintiff and Class  
15 Members have been injured and are entitled to damages in an amount to be proven at trial. Such  
16 injuries include one or more of the following: ongoing, imminent, certainly impending threat of  
17 identity theft crimes, fraud, and other misuse, resulting in monetary loss and economic harm; actual  
18 identity theft crimes, fraud, and other misuse, resulting in monetary loss and economic harm; loss  
19 of the value of their privacy and the confidentiality of the stolen Private Information; illegal sale  
20 of the compromised Private Information on the black market; mitigation expenses and time spent  
21 on credit monitoring, identity theft insurance, and credit freezes and unfreezes; time spent in  
22 response to the Data Breach reviewing bank statements, credit card statements, and credit reports,  
23 among other related activities; expenses and time spent initiating fraud alerts; decreased credit  
24 scores and ratings; lost work time; lost value of the Private Information; lost value of access to  
25 their Private Information permitted by 23andMe; the amount of the actuarial present value of  
26 ongoing high-quality identity defense and credit monitoring services made necessary as mitigation  
27 measures because of 23andMe's Data Breach; lost benefit of their bargains and overcharges for  
28 services or products; nominal and general damages; and other economic and non-economic harm.

**COUNT THREE — BREACH OF IMPLIED CONTRACT**

**On Behalf of Plaintiff and the Nationwide Class,  
or Alternatively, on Behalf of Plaintiff and the Washington Subclass**

1  
2  
3  
4 143. Plaintiff repeats and realleges the allegations contained in the Statement of Facts as  
5 if fully set forth herein.

6 144. Plaintiff and Class Members entered into an implied contract with 23andMe when  
7 they obtained services from 23andMe, or otherwise provided Private Information to 23andMe.

8 145. As part of these transactions, 23andMe agreed to safeguard and protect the Private  
9 Information of Plaintiff and Class Members and to timely and accurately notify them if their  
10 Private Information was breached or compromised.

11 146. Plaintiff and Class Members entered into the implied contracts with the reasonable  
12 expectation that 23andMe's data security practices and policies were reasonable and consistent  
13 with legal requirements and industry standards. Plaintiff and Class Members believed that  
14 23andMe would use part of the monies paid to 23andMe under the implied contracts or the monies  
15 obtained from the benefits derived from the Private Information they provided to fund adequate  
16 and reasonable data security practices.

17 147. Plaintiff and Class Members would not have provided and entrusted their Private  
18 Information to 23andMe or would have paid less for 23andMe products or services in the absence  
19 of the implied contract or implied terms between them and 23andMe. The safeguarding of the  
20 Private Information of Plaintiff and Class Members was critical to realize the intent of the parties.

21 148. Plaintiff and Class Members fully performed their obligations under the implied  
22 contracts with 23andMe.

23 149. 23andMe breached its implied contracts with Plaintiff and Class Members to  
24 protect their Private Information when it (1) failed to take reasonable steps to use safe and secure  
25 systems to protect that information; and (2) disclosed that information to unauthorized third  
26 parties.

27 150. As a direct and proximate result of 23andMe's breach of implied contract, Plaintiff  
28 and Class Members have been injured and are entitled to damages in an amount to be proven at

1 trial. Such injuries include one or more of the following: ongoing, imminent, certainly impending  
2 threat of identity theft crimes, fraud, and other misuse, resulting in monetary loss and economic  
3 harm; actual identity theft crimes, fraud, and other misuse, resulting in monetary loss and economic  
4 harm; loss of the value of their privacy and the confidentiality of the stolen Private Information;  
5 illegal sale of the compromised Private Information on the black market; mitigation expenses and  
6 time spent on credit monitoring, identity theft insurance, and credit freezes and unfreezes; time  
7 spent in response to the Data Breach reviewing bank statements, credit card statements, and credit  
8 reports, among other related activities; expenses and time spent initiating fraud alerts; decreased  
9 credit scores and ratings; lost work time; lost value of the Private Information; lost value of access  
10 to their Private Information permitted by 23andMe; the amount of the actuarial present value of  
11 ongoing high-quality identity defense and credit monitoring services made necessary as mitigation  
12 measures because of 23andMe's Data Breach; lost benefit of their bargains and overcharges for  
13 services or products; nominal and general damages; and other economic and non-economic harm.

#### 14 **COUNT FOUR — UNJUST ENRICHMENT**

##### 15 **On Behalf of Plaintiff and the Nationwide Class,** 16 **or Alternatively, on Behalf of Plaintiff and the Washington Subclass**

17 151. Plaintiff repeats and realleges the allegations contained in the Statement of Facts as  
18 if fully set forth herein.

19 152. Plaintiff and Class Members have an interest, both equitable and legal, in the  
20 Private Information about them that was conferred upon, collected by, and maintained by 23andMe  
21 and that was ultimately stolen in the 23andMe Data Breach.

22 153. 23andMe was benefitted by the conferral upon it of the Private Information  
23 pertaining to Plaintiff and Class Members and by its ability to retain, use, and profit from that  
24 information. 23andMe understood that it was in fact so benefitted.

25 154. 23andMe also understood and appreciated that the Private Information pertaining  
26 to Plaintiff and Class Members was private and confidential and its value depended upon 23andMe  
27 maintaining the privacy and confidentiality of that Private Information.

28 155. But for 23andMe's willingness and commitment to maintain its privacy and

1 confidentiality, that Private Information would not have been transferred to and entrusted with  
2 23andMe.

3 156. Because of its use of Plaintiff's and Class Members' Private Information, 23andMe  
4 sold more services than it otherwise would have. 23andMe was unjustly enriched by profiting from  
5 the additional services it was able to market, sell, and create to the detriment of Plaintiff and Class  
6 Members.

7 157. 23andMe also benefitted through its unjust conduct by retaining money that it  
8 should have used to provide reasonable and adequate data security to protect Plaintiff's and Class  
9 Members' Private Information.

10 158. 23andMe also benefitted through its unjust conduct in the form of the profits it  
11 gained through the use of Plaintiff's and Class Members' Private Information.

12 159. It is inequitable for 23andMe to retain these benefits.

13 160. As a result of 23andMe's wrongful conduct as alleged in this Complaint (including  
14 among things its failure to employ adequate data security measures, its continued maintenance and  
15 use of the Private Information belonging to Plaintiff and Class Members without having adequate  
16 data security measures, and its other conduct facilitating the unauthorized disclosure of that Private  
17 Information), 23andMe has been unjustly enriched at the expense of, and to the detriment of,  
18 Plaintiff and Class Members.

19 161. 23andMe's unjust enrichment is traceable to, and resulted directly and proximately  
20 from, the conduct alleged herein, including the compiling and use of Plaintiff's and Class  
21 Members' sensitive Private Information, while at the same time failing to maintain that  
22 information secure from unauthorized access by hackers and identity thieves.

23 162. It is inequitable, unfair, and unjust for 23andMe to retain these wrongfully obtained  
24 benefits. 23andMe's retention of wrongfully obtained monies would violate fundamental  
25 principles of justice, equity, and good conscience.

26 163. The benefit conferred upon, received, and enjoyed by 23andMe was not conferred  
27 officiously or gratuitously, and it would be inequitable, unfair, and unjust for 23andMe to retain  
28 the benefit.

1 164. 23andMe’s defective security and its unfair and deceptive conduct have, among  
2 other things, caused Plaintiff and Class Members to unfairly incur substantial time and/or costs to  
3 mitigate and monitor the use of their Private Information and has caused the Plaintiff and Class  
4 Members other damages as described herein.

5 165. Plaintiff and the Class Members have no adequate remedy at law.

6 166. 23andMe is therefore liable to Plaintiff and Class Members for restitution or  
7 disgorgement in the amount of the benefit conferred on 23andMe as a result of its wrongful  
8 conduct, including specifically: the value to 23andMe of the Private Information that was stolen  
9 in the Data Breach; the profits 23andMe received and is receiving from the use of that information;  
10 the amounts that 23andMe overcharged Plaintiff and Class Members for use of 23andMe’s  
11 products and services; and the amounts that 23andMe should have spent to provide reasonable and  
12 adequate data security to protect Plaintiff’s and Class Members’ Private Information.

13 **COUNT FIVE — DECLARATORY JUDGMENT**

14  
15 **On Behalf of Plaintiff and the Nationwide Class,  
or Alternatively, on Behalf of Plaintiff and the Washington Subclass**

16 167. Plaintiff repeats and realleges the allegations contained in the Statement of Facts as  
17 if fully set forth herein.

18 168. Under the Declaratory Judgment Act, 28 U.S.C. §§ 2201, et seq., this Court is  
19 authorized to enter a judgment declaring the rights and legal relations of the parties and grant  
20 further necessary relief. The Court has broad authority to restrain acts, such as here, that are  
21 tortious and violate the terms of the federal and state statutes described in this Complaint.

22 169. An actual controversy has arisen in the wake of the 23andMe Data Breach regarding  
23 its present and prospective common law and other duties to reasonably safeguard its customers’  
24 Private Information and whether 23andMe is currently maintaining data security measures  
25 adequate to protect Plaintiff and Class Members from further data breaches that compromise their  
26 Private Information. Plaintiff continues to suffer injury as a result of the compromise of Plaintiff’s  
27 Private Information and remain at imminent risk that further compromises of her Private  
28 Information will occur in the future given the publicity around the Data Breach and the nature and

1 quantity of the Private Information stored by 23andMe.

2 170. Pursuant to its authority under the Declaratory Judgment Act, this Court should  
3 enter a judgment declaring, among other things, the following:

- 4 a. 23andMe continues to owe a legal duty to secure consumers' Private  
5 Information and to timely notify consumers of a data breach under the  
6 common law, Section 5 of the FTC Act, and various state statutes;  
7 b. 23andMe continues to breach this legal duty by failing to employ  
8 reasonable measures to secure consumers' Private Information.

9 171. The Court also should issue corresponding prospective injunctive relief requiring  
10 23andMe to employ adequate security protocols consistent with law and industry standards to  
11 protect consumers' Private Information.

12 172. If an injunction is not issued, Plaintiff will suffer irreparable injury, and lack an  
13 adequate legal remedy, in the event of another data breach at 23andMe. The risk of another such  
14 breach is real, immediate, and substantial. If another breach at 23andMe occurs, Plaintiff will not  
15 have an adequate remedy at law because many of the resulting injuries are not readily quantified  
16 and Plaintiff will be forced to bring multiple lawsuits to rectify the same conduct.

17 173. The hardship to Plaintiff if an injunction does not issue exceeds the hardship to  
18 23andMe if an injunction is issued. Among other things, if another significant data breach occurs  
19 at 23andMe, Plaintiff will likely be subjected to substantial identity theft and other damage. On  
20 the other hand, the cost to 23andMe of complying with an injunction by employing reasonable  
21 prospective data security measures is relatively minimal, and 23andMe has a pre-existing legal  
22 obligation to employ such measures.

23 174. Issuance of the requested injunction will not disserve the public interest. To the  
24 contrary, such an injunction would benefit the public by preventing another data breach at  
25 23andMe, thus eliminating the additional injuries that would result to Plaintiff and the millions of  
26 consumers whose confidential information would be further compromised.  
27  
28



1 **VIII. CLAIMS ON BEHALF OF THE WASHINGTON SUBCLASS**

2 **COUNT SIX — VIOLATION OF THE WASHINGTON DATA BREACH NOTICE ACT,**  
3 **WASH. REV. CODE §§ 19.255.010, ET SEQ.**

4 **On Behalf of Plaintiff and the Washington Subclass**

5 175. Plaintiff Picha (“Plaintiff,” for purposes of this Count), individually and on behalf  
6 of the Washington Subclass, incorporates all foregoing factual allegations as if fully set forth  
7 herein. This claim is brought individually under the laws of Washington and on behalf of all other  
8 natural persons whose Private Information was compromised as a result of the Data Breach.

9 176. 23andMe is a business that owns or licenses computerized data that includes  
10 “personal information” as defined by Wash. Rev. Code § 19.255.010(1).

11 177. Plaintiff’s and Class Members’ Private Information includes “personal  
12 information” as covered under Wash. Rev. Code § 19.255.010(5).

13 178. 23andMe is required to accurately notify Plaintiff and Class Members following  
14 discovery or notification of the breach of its data security program if Private Information was, or  
15 is reasonably believed to have been, acquired by an unauthorized person and the Private  
16 Information was not secured, in the most expedient time possible and without unreasonable delay  
17 under Wash. Rev. Code § 19.255.010(1).

18 179. Because 23andMe discovered a breach of its security system in which Private  
19 Information was, or is reasonably believed to have been, acquired by an unauthorized person and  
20 the Private Information was not secured, 23andMe had an obligation to disclose the data breach in  
21 a timely and accurate fashion as mandated by Wash. Rev. Code § 19.255.010(1).

22 180. By failing to disclose the Data Breach to Plaintiff and all Class Members in a timely  
23 and accurate manner, 23andMe violated Wash. Rev. Code § 19.255.010(1).

24 181. As a direct and proximate result of 23andMe’s violations of Wash. Rev. Code §  
25 19.255.010(1), Plaintiff and Class Members suffered damages, as described above.

26 182. Plaintiff and Class Members seek relief under Wash. Rev. Code §§ 19.255.040,  
27 including actual damages and injunctive relief.

28

1 **COUNT SEVEN — VIOLATION OF THE WASHINGTON CONSUMER PROTECTION**  
2 **ACT, WASH. REV. CODE ANN. §§ 19.86.020, ET SEQ.**

3 **On Behalf of Plaintiff and the Washington Subclass**

4 183. Plaintiff Picha (“Plaintiff,” for purposes of this Count), individually and on behalf  
5 of the Washington Subclass, incorporates all foregoing factual allegations as if fully set forth  
6 herein. This claim is brought individually under the laws of Washington and on behalf of all other  
7 natural persons whose Private Information was compromised as a result of the Data Breach.

8 184. 23andMe is a “person,” as defined by Wash. Rev. Code Ann. § 19.86.010(1).

9 185. 23andMe advertised, offered, or sold goods or services in Washington and engaged  
10 in trade or commerce directly or indirectly affecting the people of Washington, as defined by  
11 Wash. Rev. Code Ann. § 19.86.010 (2).

12 186. 23andMe engaged in unfair or deceptive acts or practices in the conduct of trade or  
13 commerce, in violation of Wash. Rev. Code Ann. § 19.86.020, including:

14 a. Failing to implement and maintain reasonable security and privacy  
15 measures to protect Plaintiff’s and Class Members’ Private Information, which was a direct  
16 and proximate cause of the Data Breach;

17 b. Failing to identify foreseeable security and privacy risks, remediate  
18 identified security and privacy risks, and adequately improve security and privacy  
19 measures following previous cybersecurity incidents, which was a direct and proximate  
20 cause of the Data Breach;

21 c. Failing to comply with common law and statutory duties pertaining to the  
22 security and privacy of Plaintiff’s and Class Members’ Private Information, including  
23 duties imposed by the FTC Act, 15 U.S.C. § 45, which was a direct and proximate cause  
24 of the Data Breach;

25 d. Misrepresenting that it would protect the privacy and confidentiality of  
26 Plaintiff’s and Class Members’ Private Information, including by implementing and  
27 maintaining reasonable security measures;

28 e. Misrepresenting that it would comply with common law and statutory duties

1 pertaining to the security and privacy of Plaintiff's and Class Members' Private  
2 Information, including duties imposed by the FTC Act, 15 U.S.C. § 45;

3 f. Failing to timely and adequately notify Plaintiff and Class Members of the  
4 Data Breach;

5 g. Omitting, suppressing, and concealing the material fact that it did not  
6 reasonably or adequately secure Plaintiff's and Class Members' Private Information; and

7 h. Omitting, suppressing, and concealing the material fact that it did not  
8 comply with common law and statutory duties pertaining to the security and privacy of  
9 Plaintiff's and Class Members' Private Information, including duties imposed by the FTC  
10 Act, 15 U.S.C. § 45.

11 187. 23andMe's representations and omissions were material because they were likely  
12 to deceive reasonable consumers about the adequacy of 23andMe's data security and ability to  
13 protect the confidentiality of consumers' Private Information.

14 188. 23andMe's representations and omissions were material because they were likely  
15 to deceive reasonable consumers, including Plaintiff and the Class Members, that their Private  
16 Information was not exposed and misled Plaintiff and the Class Members into believing they did  
17 not need to take actions to secure their identities.

18 189. 23andMe acted intentionally, knowingly, and maliciously to violate Washington's  
19 Consumer Protection Act, and recklessly disregarded Plaintiff's and Class Members' rights.

20 190. 23andMe's conduct is injurious to the public interest because it violates Wash. Rev.  
21 Code Ann. § 19.86.020, violates a statute that contains a specific legislation declaration of public  
22 interest impact, including, but not limited to Wash. Rev. Code §§ 19.255.010, et seq. Alternatively,  
23 23andMe's conduct is injurious to the public interest because it has injured Plaintiff and Class  
24 Members, had the capacity to injure persons, and has the capacity to injure other persons, and has  
25 the capacity to injure persons. Further, its conduct affected the public interest, including the  
26 thousands of Washingtonians affected by the Data Breach.

27 191. As a direct and proximate result of 23andMe's unfair methods of competition and  
28 unfair or deceptive acts or practices, Plaintiff and Class Members have suffered and will continue

1 to suffer injury, ascertainable losses of money or property, and monetary and non-monetary  
2 damages, including from fraud and identity theft; time and expenses related to monitoring their  
3 financial accounts for fraudulent activity; an increased, imminent risk of fraud and identity theft;  
4 and loss of value of their Private Information.

5 192. Plaintiff and Class Members seek all monetary and non-monetary relief allowed by  
6 law, including actual damages, treble damages, injunctive relief, civil penalties, and attorneys' fees  
7 and costs.

### 8 IX. REQUEST FOR RELIEF

9 Plaintiff, individually and on behalf of members of the Nationwide Class and Washington  
10 Subclass, as applicable, respectfully requests that the Court enter judgment in Plaintiff's favor and  
11 against 23andMe, as follows:

12 1. That the Court certify this action as a class action, proper and maintainable pursuant  
13 to Rule 23 of the Federal Rules of Civil Procedure; declare that Plaintiff is a proper class  
14 representative; and appoint Plaintiff's Counsel as Class Counsel;

15 2. That the Court grant permanent injunctive relief to prohibit 23andMe from  
16 continuing to engage in the unlawful acts, omissions, and practices described herein, including;

- 17 a. Prohibiting 23andMe from engaging in the wrongful and unlawful acts  
18 described herein;
- 19 b. Requiring 23andMe to protect all data collected through the course of its  
20 business in accordance with all applicable regulations, industry  
21 standards, and federal, state or local laws;
- 22 c. Requiring 23andMe to delete, destroy and purge the Private Information  
23 of Plaintiff and Class Members unless 23andMe can provide to the Court  
24 reasonable justification for the retention and use of such information  
25 when weighed against the privacy interests of Plaintiff and Class  
26 Members;
- 27 d. Requiring 23andMe to implement and maintain a comprehensive  
28 Information Security Program designed to protect the confidentiality and  
integrity of Plaintiff's and Class Members' Private Information;
- e. Requiring 23andMe to engage independent third-party security  
auditors/penetration testers as well as internal security personnel to  
conduct testing, including simulated attacks, penetration tests, and audits  
on 23andMe's systems on a periodic basis, and ordering 23andMe to  
promptly correct any problems or issues detected by such third-party  
security auditors;

- 1 f. Requiring 23andMe to engage independent third-party security auditors  
2 and internal personnel to run automated security monitoring;
- 3 g. Requiring 23andMe to audit, test, and train its security personnel  
4 regarding any new or modified procedures;
- 5 h. Requiring 23andMe to establish an information security training program  
6 that includes at least annual information security training for all  
7 employees, with additional training to be provided as appropriate based  
8 upon employees' respective responsibilities with handling Private  
9 Information, as well as protecting the Private Information of Plaintiff and  
10 Class Members;
- 11 i. Requiring 23andMe to routinely and continually conduct internal  
12 training and education, at least annually, to inform internal security  
13 personnel how to identify and contain a breach when it occurs and what  
14 to do in response to a breach;
- 15 j. Requiring 23andMe to implement a system of testing to assess its  
16 respective employees' knowledge of the education programs discussed in  
17 the preceding subparagraphs, as well as randomly and periodically  
18 testing employees' compliance with 23andMe's policies, programs and  
19 systems for protecting Private Information;
- 20 k. Requiring 23andMe to implement, maintain, regularly review and revise  
21 as necessary, a threat management program designed to appropriately  
22 monitor 23andMe's information networks for threats, both internal and  
23 external, and assess whether monitoring tools are appropriately  
24 configured, tested, and updated;
- 25 l. Requiring 23andMe to meaningfully educate all Class Members about  
26 the threats they face as a result of the loss of their Private Information to  
27 third parties, as well as the steps affected individuals must take to protect  
28 themselves;
- 29 m. Requiring 23andMe to implement logging and monitoring programs  
30 sufficient to track traffic to and from 23andMe servers; and
- 31 n. Appointing a qualified and independent third-party assessor to conduct  
32 for a period of 10 years a SOC 2 Type 2 attestation to evaluate on an  
33 annual basis 23andMe's compliance with the terms of the Court's final  
34 judgment, to provide such report to the Court and to counsel for the  
35 class, and to report any deficiencies in compliance with the Court's final  
36 judgment.

37 3. That the Court award Plaintiff and Class and Subclass Members compensatory,  
38 consequential, general, and nominal damages in an amount to be determined at trial;

39 4. That the Court order disgorgement and restitution of all earnings, profits,  
40 compensation, and benefits received by 23andMe as a result of its unlawful acts, omissions, and  
41 practices;



CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

Camie Picha

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

Christopher L. Springer, Keller Rohrback L.L.P., 801 Garden Street, Suite 301, Santa Barbara, CA 93101

DEFENDANTS

23andMe, Inc.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

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

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

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

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

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

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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

- X 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Class Action Fairness Act, 28 U.S.C. § 1332

Brief description of cause: Data Breach

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: X Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE See Attachment A

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND X SAN JOSE EUREKA-MCKINLEYVILLE

DATE 12/29/2023

SIGNATURE OF ATTORNEY OF RECORD

/s/ Christopher L. Springer

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

**Authority For Civil Cover Sheet.** The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
  - c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
  - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.



**Civil Cover Sheet**  
**Attachment A**

**VIII: RELATED CASES**

<b>JUDGE</b>	<b>DOCKET NUMBER</b>
Hon. Edward M. Chen	3:23-cv-05147-EMC
	3:23-cv-05178-EMC
	3:23-cv-05198-EMC
	3:23-cv-05200-EMC
	3:23-cv-05234-EMC
	3:23-cv-05259-EMC
	3:23-cv-05281-EMC
	3:23-cv-05302-EMC
	3:23-cv-05323-EMC
	3:23-cv-05332-EMC
	3:23-cv-05341-EMC
	3:23-cv-05345-EMC
	3:23-cv-05369-EMC
	3:23-cv-05419-EMC
	3:23-cv-05439-EMC
	3:23-cv-05464-EMC
	3:23-cv-05541-EMC
	3:23-cv-05548-EMC
	3:23-cv-05565-EMC
	3:23-cv-05579-EMC
3:23-cv-05635-EMC	
3:23-cv-05677-EMC	
3:23-cv-05717-EMC	
3:23-cv-05768-EMC	
3:23-cv-05779-EMC	
Hon. Charles R. Breyer	3:23-cv-05968-CRB
Mag. J. Laurel Beeler	3:23-cv-05980-LB
Mag. J. Nathaniel M. Cousins	5:23-cv-06205-NC
Mag. J. Donna M. Ryu	4:23-cv-06481-DMR