BEFORE THE AMERICAN ARBITRATION ASSOCIATION

KAREN DAVIS-HUDSON and SARAH DIAZ, individually and on behalf of all others similarly situated,	)	
Claimants,	)	
vs.	)	CASE NO. 74-20-1400-0032
23ANDME, INC.,	)	
Respondent.	)	

DECLARATION OF PATRICK J. SHEEHAN IN SUPPORT OF CLAIMANTS' MOTION FOR ENTRY OF ORDER FINALLY APPROVING CLASS ACTION SETTLEMENT AND MOTION FOR AWARD OF ATTORNEYS' FEES AND EXPENSES AND INCENTIVE AWARDS FOR CLASS REPRESENTATIVES

I, Patrick J. Sheehan, declare as follows:

1. I am an attorney at law licensed to practice in the State of Massachusetts and New York. I am a partner in the firm of Whatley Kallas, LLP, Counsel for Claimants Karen Davis-Hudson and Sarah Diaz ("Claimants"). I make this declaration in support of Claimants' Motion for Entry of Order Finally Approving Class Action Settlement and Motion for Payment of Attorneys' Fees, Cost and Expenses and Incentive Awards for Class Representatives.

2. I have been actively involved in the litigation of this action since its inception in January 2014. I am familiar with the proceedings and settlement in this action and the possible risks and factors we considered in reaching a successful resolution of the action on the terms set forth in the Settlement Agreement. If called upon as a witness, I would be competent to testify that the following facts are true and correct. The following is based on my personal recollection of events in this proceeding.

3. On January 13, 2014, Claimants filed a Demand for Class Arbitration against Respondent 23andMe, Inc. ("23andMe") captioned *Davis-Hudson, et al. v. 23andMe, Inc.* with the American Arbitration Association, which was assigned Case Number 74-20-1400-0032 (the "Arbitration"). Claimants filed ta First Amended Demand for Class Arbitration (the "Demand") in this arbitration on February 18, 2016. As Claimants allege in the operative Demand, and explained in the papers filed in support of their motion for preliminary approval of this settlement, the 23andMe Personal Genome Service (the "PGS") was designed by 23andMe and offered for sale on-line. According to Claimants, 23andMe sold the PGS between October 16, 2007 and November 22, 2013 to consumers based on inaccurate or misleading information regarding the PGS's specifications and capabilities, and in violation of state and federal law. Based on these allegations, the Demand asserts federal and state law causes of action for breach of warranty and violation of state consumer protection laws, seeking primarily damages. Respondent denies, and continues to deny, all such allegations.

4. Counsel for the Parties began settlement discussions in the Fall of 2015. On January 26, 2016, the Parties conducted an in-person mediation session before David

Geronemus. Despite fruitful negotiations, no settlement agreement was reached at that mediation. The Parties continued to engage in negotiations by conducting numerous telephone conferences, involving 23andMe representatives, and their respective counsel, as well as several written demands provided to 23andme relating to the insurance policies covering such claims. Yet again, no settlement agreement was reached.

5. Later, the parties arranged to have another in-person mediation session before the Honorable Carl J. West (Ret.). During this mediation, which was held on June 2, 2017, the Parties finally agreed to the basic terms of the settlement, summarized in a term sheet prepared by Judge West. The mediation session was followed by extensive follow-on negotiations during which the terms of an agreement were extensively debated and negotiated.

6. The parties continued to engage in protracted negotiations between early June and late July 2017 over the precise language of the Settlement Agreement and accompanying exhibits. This process in itself raised numerous issues that required additional consultation and effort, even after the settlement terms were originally agreed to in principle. Eventually, the parties agreed to enter the Settlement Agreement, which was signed effective July 19, 2017.

7. As set forth above, the Settlement Agreement's terms were negotiated over a period of eighteen months, in a process that involved conducting numerous telephone conferences, direct meetings with 23andMe representatives and their counsel, multiple in-person mediation sessions before two different mediators, and extensive follow-on negotiations after those mediations during which the terms of an agreement were extensively debated and negotiated. Accordingly, the Parties had had an opportunity to evaluate and to analyze thoroughly the contested legal and factual issues posed by the Arbitration so that adequate demands and the accurate evaluation of 23andMe's positions could be made.

8. While Claimants' claims for damages were hotly contested by 23andMe, Claimants believe the maximum provable class-wide damages would have been approximately $50.00 for each unit of the PGS purchased, based on the fact that the PGS had two components, a Health component and an Ancestry component, only the Health component was at issue in this

Arbitration, and the PGS had a base retail price of approximately $99 during the vast majority of the relevant time period.

9. The compensation the parties ultimately agreed to is a reasonable compromise of the claims at issue. Given that the PGS Kits sold at a retail price of approximately $99, a cash payment of $12.50 for each unit would constitute a significant recovery based on the average purchase price for the PGS Kits. *Id.* As one measure of damages (which would be vigorously disputed by Respondent), Settlement Class Members could expect to receive a maximum of approximately $50.00 if this matter resolved in Claimants' favor in arbitration (based on an alleged reduction in value in terms of what was purchased versus what was provided of up to 50%, the estimated value of the Health component of the PGS). If the settlement is approved, it will compensate Settlement Class Members who elect cash compensation approximately 25% of their alleged losses based on this damage estimate. And if they elect to not receive cash and automatically receive the Certificate, that Certificate is worth 80% of their alleged losses based on these estimates.

10. Class Counsel estimates the value of the settlement to be in excess of $22,650,000, based on the total number of units of the PGS actually sold by 23andMe during the class period (approximately 510,000), multiplied by the $40 value of the Certificate (totaling $20,400,000), plus attorneys' fees, costs and expenses (totaling $2,250,000).

11. While Class Counsel believed they would be successful in this litigation, the Settlement Class nevertheless faced many risks in proving liability and damages. In this regard, while they believed they could ultimately establish that the PGS was not accurately represented in terms of its actual, legally permitted performance, this issue is far from certain and would be vigorously contested by Respondent. In attempting to establish liability, Class Counsel faced the risks that there would be significant disputes whether the characteristics of the PGS were compliant with applicable industry standards, federal law and state law, which would likely entail competing viewpoints expressed by the parties' experts. Thus, this Arbitration was certainly not without risk in terms of the range of possible recovery, assuming liability could be

established. The range of recovery went from zero if the Arbitrator accepted Respondent's arguments that there are no damages, to an amount based on various calculations such as a comparison of the pricing of the PGS to comparable products provided by other companies, based on the market pricing of the products during the entirety of the relevant time period. In addition, although the Arbitrator has certified a Settlement Class as part of the preliminary approval order, he has not certified a litigation class.

12. The attorneys' fees and expenses and incentive awards provided for by the settlement were not negotiated until after the principal terms and conditions of the settlement benefitting the Settlement Class Members had been agreed to by the parties and were not agreed to until after the Claimants had submitted that settlement for preliminary approval. They were negotiated with the active assistance and involvement of The Honorable Carl J. West (Ret.), so as to ensure there was no appearance of any potential conflict between the negotiations over the principal terms of the settlement benefitting the Settlement Class and any fee negotiations.

13. Throughout this action, Class Counsel expended substantial time and resources to prosecute a nationwide class action suit with no guarantee of compensation or reimbursement in the hope of prevailing against a sophisticated Respondent represented by high caliber attorneys at Orrick Herrington & Sutcliffe LLP, one of the largest and most prestigious law firms in the United States. .

14. As set forth in the firm resumes previously submitted to the Arbitrator, Class Counsel are experienced in class action litigation. They believe the settlement terms are reasonable, particularly considering, *inter alia*, the risks and delays of continued litigation. The benefits made available to the members of the Settlement Class as a whole are fair, reasonable, and adequate compensation for such claims based on the particular facts and circumstances of this case.

15. In addition to the significant publicly available information about the design of the PGS Kits on both sides of the debate, in connection with these settlement discussions 23andMe disclosed significant information regarding the FDA process, the information gathered

to respond to civil investigation demands from government authorities, and the nature and characteristics of operation of the PGS Kits. 23andMe also supplied Class Counsel with significant evidentiary information through the discovery process. Realistic damage assessments from both sides were based on information available about comparable and competitive products available on the market, average market prices for the PGS Kits, and sales data. Class Counsel had all of this information prior to and during the course of negotiating the settlement. With the benefit of this information, Class Counsel are confident in their assessment of the merits of the case and the events that gave rise to it.

16. The expertise and experience of Class Counsel and their views is another important factor to consider in assessing the reasonableness of this settlement. Whatley Kallas, LLP and Podhurst Orseck, P.A. are experienced practitioners in the complex litigation and class action fields. The firm resumes of Whatley Kallas and Podhurst Orseck are already on file with the Arbitrator in connection with the motion for preliminary approval of settlement and thus will not be re-submitted with this Declaration. Counsel for both Plaintiffs and Defendants agree that the settlement achieved is fair, adequate and reasonable, and should be approved by this Court.

17. As set forth in the Declaration of Alex Thomas of Kurtzman Carson Consultants ("KCC"), on September 15, 2017, class notices were provided via electronic mail to 316,667 potential Settlement Class Members. In addition, the settlement website 23andmesettlement.com was also established and went live on September 15, 2015 to answer inquiries. On September 25, 2017, class notices were provided via U.S. mail to 18,977 potential Settlement Class Members whose email notice bounced back. To date, only 535 Settlement Class Members have had their class notices returned as undeliverable.

18. There have been only 19 requests for exclusion and no objections filed with KCC. There have been only 24 "objections" filed with the American Arbitration Association, a number of which are not really objections to the settlement at all but rather statements by Settlement Class Members to the effect that they were satisfied with the PGS. Some objections demand full refunds for the PGS but such objections do not take into account that settlement is the product of

compromise. Other objections ask that attorneys' fees not be awarded but, as set forth in the application for an award of attorneys' and expenses submitted concurrently herewith, the requested amount falls well within the range justified by a settlement of the size at issue here.

19. Class Counsel have communicated with numerous Settlement Class Members in response to the class notice, and the settlement has received widespread attention on-line. The communications Class Counsel have received from Settlement Class Members directly have been overwhelmingly positive.

20. My firm has been involved in every aspect of this action from pre-suit investigation to filing the initial Demand for Class Arbitration raising these issues, briefing the arbitration clause's construction with regard to whether proceeding on a class basis was permitted and Respondent's petition to vacate the Arbitrator's clause construction award in the Northern District of California, conducting written discovery and document discovery, filing the First Amended Demand for Class Arbitration, engaging in protracted settlement negotiations, including a in-person mediation session before David Geronemus, a second in-person mediation session before Judge Carl J. West (Ret.) and numerous telephonic settlement discussions, negotiating the language of the settlement agreement and associated exhibits, working with the settlement administrator to develop the settlement notice and claims program, and working with co-counsel in preparing the preliminary and final approval settlement papers and communicating with class members.

21. I have reviewed my firm's time entries in our billing records, and have used billing judgment to ensure that duplicative or unnecessary time has been excluded and that only time reasonably devoted to the litigation has been included. The time and descriptions displayed in my firm's billing records were regularly and contemporaneously recorded by me and the other timekeepers of the firm pursuant to firm policy in the regular and ordinary course of my firm's business operations, based on underlying records maintained by me and other timekeepers at Whatley Kallas, and have been and are maintained in the computerized records of my firm based on records that were created at or shortly after the time the actions reflected in those books and

records were actually undertaken. In summary, my office has expended 1,438 hours in attorney and paralegal time on this case through October 6, 2017, and I reasonably anticipate billing at least another 50 hours in attorney time to this matter from that date through the final approval hearing date. Multiplying the above hours by my firm's standard hourly rates results in a lodestar of $856,507.50. The hourly rates used to calculate this figure are the usual and customary rates charged for each individual in all of my firm's cases. A breakdown of the lodestar is as follows:

NAME	**HOURS**	**RATE**	**LODESTAR**
Patrick J. Sheehan, Partner	611.10	$650.00	$397,215.00
Alan. M. Mansfield, Of Counsel	518.70	$750.00	$389,025.00
Shujah Awan, Associate	4.10	$450.00	$1,845.00
Sally Cormier, Paralegal	137.70	$225.00	$30,982.50
Sharon Musso, Paralegal	82.70	$225.00	$18,607.50
Sherri Y. Cook, Paralegal	67.80	$225.00	$15,255.00
Suzanne P. York, Paralegal	10.80	$225.00	$2,430.00
Jeffrey A. Keenan, Paralegal	3.30	$225.00	$742.50
Bridgette Charles, Paralegal	1.80	$225.00	$405.00
TOTALS	1,438.00		$856,507.50

22. My firm incurred a total of $39,645.00 in expenses in connection with the prosecution of this Arbitration. They are broken down as follows:

EXPENSE CATEGORY	**TOTAL**
Arbitrator fees	$16,690.00
Mediator fees	$10,534.45

Filing Fees	$1,825.00
Travel Expense	$8,052.25
Litigation Support Services	$900.00
Online research	$92.10
Express mail	$624.43
Photocopies	$766.99
Telephone	$61.51
Miscellaneous	$98.27
TOTAL	$39,645.00

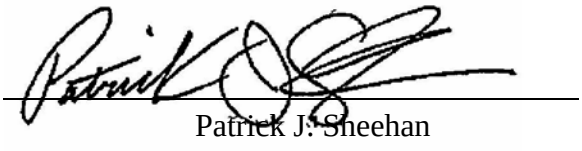
23. I have reviewed the Declarations of John Gravante and James H. McFerrin submitted concurrently herewith. Based on that review, I understand that Podhurst Orseck, P.A. has expended 657.75 hours in attorney and paralegal time and incurred $296,148.75 in lodestar on this Arbitration and incurred $47,641.59 in expenses through October 6, 2017. I further understand that the McFerrin Law Firm, LLC has expended 44 hours in attorney time and incurred $19,800 in lodestar on this Arbitration and incurred no expenses through October 6, 2017. In total, my firm and our co-counsel have expended 2,139.75 hours in attorney and paralegal time and incurred $1,172,456.25 in lodestar on this Arbitration and incurred $87,286.59 in expenses through October 6, 2017. Significantly, litigation tasks were allocated between counsel to prevent "over-lawyering" and inefficiency.

24. I believe all of the time and expenses billed in this case by all firms were necessarily and reasonably incurred to bring this arbitration to a successful conclusion. All of the time and expenses we incurred was contingent on the outcome of this Arbitration.

25. A modest service award of $10,000 each for Karen Davis-Hudson and Sarah Diaz is justified because of their willingness to step forward and represent the class in this Arbitration. As indicated in their Declarations submitted concurrently herewith, Claimants reviewed relevant

pleadings and kept in communication with their counsel throughout the litigation. Claimants were also willing to provide testimony as needed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 9, 2017 at Boston, Massachusetts.



Patrick J. Sheehan