

BEFORE THE AMERICAN ARBITRATION ASSOCIATION

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

Claimants,

v.

23andMe Inc.,

Respondent.

AAA Case No.: 74-20-1400-0032

**SUPPLEMENTAL DECLARATION OF ALEX THOMAS ON BEHALF OF
SETTLEMENT ADMINISTRATOR REGARDING NOTICE**

I, Alex Thomas declare:

1. I am employed as a project manager by Kurtzman Carson Consultants (“KCC”), a nationally-recognized notice and claims administration firm located at 462 S. 4th Street, Louisville, KY 40202. KCC was retained as the Settlement Administrator in this case, and as the project manager, I oversaw the administrative services provided. I submit this declaration to provide supplemental information in regards to the *Davis-Hudson v. 23andMe Inc.*, Notice Program.

2. As previously reported, on September 15, 2017, KCC established a website for this settlement at www.23andmesettlement.com. To date, there have been 74,371 total visitors from unique IPs to the website.

3. As previously reported, on September 15, 2017, KCC established a toll free telephone number for Class Members to call. To date, KCC has received 83 requests for a notice and election form through the telephone number.

4. As previously reported, on September 25, 2017, KCC mailed the Summary Notice to 18,977 Settlement Class Members whose email notice bounced back. To date 2,160 unique Class Members had their Summary Notices returned as undeliverable.

5. On October 13, 2017, KCC sent the Reminder Email Notice to 296,948 Class Members, which the verification service we used confirmed were valid email addresses, where the initial email did not result in a bounce back, and who had not submitted an Election Form. A true and correct copy of the Reminder Email Notice is attached hereto as Exhibit A.

6. Both the Initial Email Notice and the Reminder Email Notice had the content of the Notice imbedded in the body of the email rather than being sent as an attachment in order to prevent the Email Notice from being blocked by service providers. Both Email Blasts were sent from a known server with a good send

reputation. Prior to broadcast the email content is scanned and given a potential SPAM score. The email campaigns received the best possible score of zero.

7. The deadline to submit a request for exclusion (“opt-out”) was October 20, 2017. As of November 3, 2017, KCC has received 68 timely opt-outs. A list of all individuals who submitted a request to opt-out of the settlement is attached hereto as Exhibit B.

8. The deadline to submit an objection to the settlement was October 20, 2017. Pursuant to the Settlement Agreement, Objections were to be sent to the Arbitrator. As of November 3, 2017, KCC has received 4 (four) potential objections, 1 (one) of those objections were also sent to the Arbitrator and 3 (three) objections were only submitted to KCC. Copies of the objections sent only to KCC are attached hereto as Exhibit C.

9. On Tuesday October 31, 2017, KCC was provided by class counsel a list of objections and opt-outs received by the Arbitrator. KCC did a search of the names and email addresses and address against the class member data list. The results of this search are attached as Exhibit D

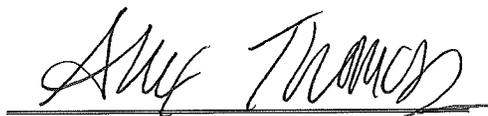
10. There have been 4 (four) class members who appeared to submit both an opt-out and an objection. In order to clarify the positions of class members who appeared to file both I reached out by phone and/or email to the following class

members: Anthony Hatswell, John Nabholz, Ray Harris, Elizabeth LaTendresse. John Nabholz confirmed he wishes to object. Elizabeth LaTendresse confirmed she wishes to be excluded. I have not been able to confirm Mr. Hatswell, or Mr. Harris' position at this time.

11. The deadline to submit a cash compensation election form is December 6, 2017. As of November 3, 2017, KCC has processed 26,070 cash compensation election forms, representing 42,626 units.

12. Per the Settlement Agreement, KCC will send an additional notice by email to class members. The date the third notice is expected to take place is November 29, 2017.

I declare under penalty of perjury to the best of my knowledge under the laws of the State of Kentucky that the foregoing is true and correct and that this declaration was executed this 3rd day of November, 2017, at Louisville, Kentucky.

A handwritten signature in cursive script, appearing to read "Alex Thomas", is written over a horizontal line.

Alex Thomas

EXHIBIT A

From: [KCC Settlement Administrator](#)
To: [Alex Thomas](#)
Subject: 23andMe Class Action Settlement
Date: Friday, October 13, 2017 8:21:40 PM

ClaimId: 30000001
PINCode: 559176

23andMe Inc. PGS Settlement – Reminder Notice of Deadlines

You should have previously received a Notice explaining your rights in connection with a proposed settlement of an arbitration. This arbitration concerns claims relating to 23andMe, Inc. in connection with its Personal Genome Service (“PGS”). You are entitled to compensation if you purchased the PGS between October 16, 2007 and November 22, 2013. Records indicate you purchased a PGS during this time period. You can elect to receive cash compensation under this settlement, but only if you submit a valid and timely election form by **December 6, 2017**. If you do nothing you will automatically receive compensation in the form of a certificate for \$40 off a Genetic Testing Kit. You need do nothing further to receive the certificate.

If you want to exclude yourself from or comment on or object to the settlement, you must follow the instructions in the original notice and submit your request by no later than **October 20, 2017. The final approval hearing will take place on November 15, 2017.** Please note that a person or his or her attorney may appear in person at the final approval hearing in the event he or she timely objects to the settlement. Individuals may appear without the need to hire an attorney or have an attorney present.

For more information about the settlement and your options and how to exercise them, or to elect cash compensation online, [click here](#). You can also call the settlement administrator toll-free at **1-866-645-6923** or visit www.23andMesettlement.com.

This message was intended for: alex.thomas@kccllc.com
You were added to the system September 14, 2017.
For more information [click here](#). [Update your preferences](#)
[Unsubscribe](#) | [Unsubscribe via email](#)



EXHIBIT B

Davis-Hudson v. 23andMe Inc.

Timely Requests for Exclusion as of November 2, 2017

Name

1. AKIO YOSHIMOTO
2. ALEKSANDR SHAPOVALOV
3. ALEX ABBAS
4. ANDREW CRAWFORD
5. ANGEL MAK
6. ANN TURNER
7. BARBARA SIMPSON
8. BENJAMIN DANZIGER
9. BONNIE DOWNS
10. BRIGITTA MCGREEVY
11. BUDDY WHITTENBURG
12. CHRIS BITNER
13. CHRISTOPHER YORGEY
14. DANIEL MEWES
15. DEBORAH HALL
16. DONNA SMITH
17. DONNA HARTMAN
18. EDWARD MCLAUGHLIN
19. EMILY RIGGS
20. ERICA BURGESS
21. FRANCES FUCHS
22. GABRIELA FULTON
23. GEORGE GLASS
24. GLORIA HIGGINS
25. IVAN PAPUSHA
26. JANE GENNUSO
27. JEANNE KILBURN
28. JOHN CORBETT
29. JOHN WISSENBACH
30. JON CROW
31. JOY MARTINA
32. JULIAN VIDAL
33. JULIE BRAHAN
34. KATE AITCHISON
35. KATHERINE HOPE BORGES
36. KATHLEEN KADEL
37. KATHRYN MULKEY

38. KEITH FULTON
39. KENT HOFFMAN
40. KENYATTA CROCKETT
41. KIM BEALS
42. LEE ROBERTS
43. LINDA BITNER
44. LORRAINE ELLIS
45. LOTFI BENCHOUK
46. MARGARET WADE
47. MARIA LOURDES DE LA PAZ MORENO CAMPOS
48. MARIT MORTENSEN-BIRD
49. MARK ENGLUND
50. MARY FILOSI
51. MICHAEL BAUER
52. MICHAEL MCCEIG
53. MICHELLE MABIE
54. MILFORD LAWHUN
55. NARGIZA TURAPOVA
56. NICOLE CROW
57. OMAR OBEIDAT
58. RAJIV MAHADEVAN
59. RODGER GILSON
60. RUHIYYEH TURNER
61. STEFANIE BLOCK
62. STEPHAN LAMMEL
63. STEVEN HERRIN
64. VALERIE HOTCHKISS
65. VAN PIERRE HO
66. VICKIE SANDERS
67. VIVIAN BLANCO
68. WANDA DOLL

EXHIBIT C

From: [Leffell, David](#)
To: [#NA KCC 23 and Me settlement](#)
Subject: Detailed and personalized response required
Date: Sunday, October 15, 2017 9:44:47 AM

I would like the amount due me to be returned to 23andme. There is substantial societal value to the genotype and phenotype data that 23andme is collecting. Science is not perfect. In addition FDA and clinical laboratory regulations never anticipated the technology or mass application that was developed by 23andme in an innovative and groundbreaking fashion. This settlement was simply an abuse of the class action legal framework and I consider it pernicious. Further this particular settlement is egregious and was designed simply to enrich lawyers. By this email I am advising you that I will require written proof that the money due me under the terms of the class-action lawsuit have been deducted from the total settlement with 23andme and returned to them. In addition I will require proof that no attorney benefited from this, regardless of how trivial the amount. I am certain you have never received an email like this before and expect confirmation of receipt including a signed affidavit confirming that you will follow my instructions. Thank you.

David J. Leffell, MD
David Paige Smith Professor of Dermatology & Surgery
Chief, Section of Dermatologic Surgery and Cutaneous Oncology
Yale School of Medicine

Address: 40 Temple Street
Suite 5a
New Haven, CT 06510
Telephone: 203 785 3466
Fax: 203 785 5256

From: [Dylan Robinson](#)
To: [#NA KCC 23 and Me settlement](#)
Subject: Regarding Claims in 23&Me Class Case
Date: Friday, October 13, 2017 9:15:09 PM

Settlement Arbitrator,

I am writing to you today as a member of the class involved in this case. I want to share, on record, my concerns about this case and the impacts it could have on genetically-guided medicine in general.

1.) I believe this case to be completely frivolous in nature and an improper application of the letter of the law with no regard to its spirit or intent. The personal genome service doesn't and doesn't purport to diagnose or treat any medical condition (as would necessarily be regulated by the FDA). This service does two things fundamentally:

- Reveals to the customer their own genetic data. This is no different than someone showing you a photograph of your back - it's objective data requiring no interpretation before being provided, and it's data that you cannot easily get on your own.

- Provides, based on a very large library of peer-reviewed scientific papers, a casual, aggregated interpretation of your genetic data. The website was clear during the time frame concerned by this case that the data was based on research, that it was not an "absolute", and that many other individual factors play into whether gene expression is realized.

2.) This service made a reasonable user aware of the quality of the data, the need to consult with a physician, and the fact that there are other factors involved in gene expression. No reasonable person could have read the content on the website and concluded that an "increased risk" of a disease was, in fact, a diagnosis. Furthermore, this service did not assert to treat any illness whatsoever. Finally, the website was clear that the FDA had poor guidelines in place for genetic data for the public but that, in the view of the 23&me company, *knowing* was better than not knowing.

3.) The existence and continued pursuit of this case presents a potential to harm public health on a large scale far worse than the Personal Genome Service of 23&me ever did or could have. I can only speculate that the selfish pursuit of money drives the claimants' pursuit of this absurd case.

It is important that we, as adults, take full and total responsibility for our own medical care. Our doctors, who interact with us 1-2 times per year, cannot care for us. Restaurants cannot care for us. Our family cannot care for us. We must take an active role in our healthcare and, as a society, stop expecting others to do it for us. However, in order to do so, we must have access to as much information about medicine and our own bodies as possible. Some things are generally regarded as important for individual knowledge - your blood pressure, resting heart rate, and cholesterol. This is because these items help you understand and take an active role in your health. As we move forward in the future of medicine, genetic data and risks are going to be an integral part of actively managing one's health - much like cholesterol. If one knows their genetic risks, they can make lifestyle changes that mitigate that risk and save potentially tens or hundreds of thousands of lifetime dollars in care and disease management. This could result in billions or trillions of national dollars saved, but it starts with access to genetic data.

This case corners an innovative company and discourages others from helping

people unlock data about their own bodies (much the same way blood pressure cuffs, glucose tests, and cholesterol tests do). This further isolates important data from the individual and causes a situation where they must seek out a physician willing to do such genetic sequencing and interpret the results. It also forces the individual to rely on that physician's understanding of genetic risk factors as opposed to allowing a company like 23&Me to have a team of experts aggregate a large data set of articles and journals. These barriers will cause people to lack this genetic data about themselves and has the net result of the individual failing to manage genetic risks. This degrades health, degrades life expectancy, increases the cost of healthcare, promotes both poor health and financial poverty, and may well result in early death.

As a member of this class, I strongly urge you to see the damage this case is doing and reject the claimants case and demands. Choose the side of knowledge, individual responsibility, and beneficial lifestyle changes based on one's own DNA.

I am not excluding myself from this class at this time as I want to preserve my right to appear in person during the hearing if I so choose at a later time. In the meantime, I would like this message entered into applicable record and considered during this process.

James Dylan Robinson

Sent from my iPhone

From: [Josh McCormick](#)
To: [#NA KCC 23 and Me settlement](#)
Subject: Compounding gift certifications, also potential unintended meaning on "kit" definition
Date: Friday, September 15, 2017 9:46:58 PM

23andMe Settlement Administrator:

Question:

I may have up to FOUR gift certificates coming my way. I couldn't find anything that officially said if multiple gift certificates could be applied to a single purchase. (And if so, what happens with any excess amount?) I did read this point in the settlement agreement...

6. The Certificates [...] may not be used in combination with other Certificates to obtain additional discounts.

Does "other Certificates" mean other Certificates from the settlement, or other Certificates from outside the settlement?

Observation:

The settlement language says:

2. "Genetic Testing Kit" means a kit purchased from 23andMe that is used to collect saliva that is tested using...

3. The Certificates [...] will be valid for the purchase of a Genetic Testing Kit as defined in Paragraph 2 above from 23andMe.

I remember walking into CVS and seeing 23andMe kits on the shelf for something like \$25 each. The kits were used to collect saliva and send it to their labs. However, outside of that, people were on their own to pay for processing.

My own careful read of the language seems to allow them [23andMe] to accept the gift certificates for kits which are for the purpose of collecting saliva for analysis, but it does not seem to specifically require them to accept the gift certificates for the analysis itself. Again, just for kits for the the collection of saliva which will be tested.

If they wanted to be jerks, they could accept the gift certificates for just the saliva collection kits, and then charge extra for the processing, like they do with off-the-shelf purchases at CVS.

Thank you for your time,

Josh McCormick
Potential Settlement Class Member Extraordinaire
:)

From: [Josh McCormick](#)
To: [#NA KCC 23 and Me settlement](#)
Subject: Re: 23andMe Settlement Re: Restrictive definition is a material and negative impact on settlement value
Date: Friday, September 15, 2017 10:50:55 PM

23andMe Settlement Administrator!

Just to be pedantic, earlier I said...

I have trouble believing that the Settlement Administrator intended to recover the value of processing (in terms of the logistics of receiving and billing) the testing kit, minus the value of the kit itself, and minus the value of shipping, and minus the value of lab processing, and minus the value of ongoing user access.

If they are representing \$12.50 as covering the whole 23andMe experience and value as I describe (which I don't believe is the case), then I ask that an audit be performed to verify the true value.

To be clear, if they are NOT representing \$12.50 as covering the whole 23andMe experience (as any normal person would define it), then I'd want to know what the value of that is, and if the Settlement Administrator as well as 23andMe is still just as interested in providing a settlement that approaches the actual costs beginning with sending out the kit and ending with the user retrieving the *genetic* results online, and then an additional two years of online access.

Just a stab in the dark at the specific items of monetary value would be: manufacturing the complete kit, receiving, warehousing, shipping the kit (to the customer and then again back for processing), handling the user account and billing, handling the physical processing (logistics) of the returned sample, actual lab transportation and processing costs, accumulating/analyzing/delivering results, and maintaining an ongoing user account.

Seriously. \$12.50 is like, lawyer dirty trick lowball kind of money. That can't be even close to the actual value or cost of what I purchased when I (and others) sent money to 23andMe.

Thank you for your time,

That Potential Class Action Settlement Member You Totally Can't Get Your Mind Off Of,
Josh McCormick
:)

From: Josh McCormick <jmccorm@yahoo.com>
To: "tips@consumerist.com" <tips@consumerist.com>
Sent: Friday, September 15, 2017 9:25 PM

Subject: 23andMe Settlement Re: Restrictive definition is a material and negative impact on settlement value

From: Josh McCormick <jmccorm@yahoo.com>
To: "info@23andmesettlement.com" <info@23andmesettlement.com>
Sent: Friday, September 15, 2017 9:18 PM
Subject: Restrictive definition is a material and negative impact on settlement value

23andMe Settlement Administrator:

Based on the issues I have raised (below) you may want to revisit exhibit 1 point #8. The paragraph reads as follows:

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

"...as defined in Paragraph 2 and providing the results to the person..." seems to be deceptively specific language.

1. My read is that it covers the cost of PROCESSING of the kit, but not the actual kit itself (or mailing it to and from the customer). In that light alone, \$12.50 seems like a significantly low value.

2. Additionally, the kit itself has been narrowly defined in Paragraph 2 to only be the device which is used to collect samples for genetic processing, but not necessarily to do the processing itself. In that light, "providing the results" would only seem to mean informing the user that the kit has been received, that it is ready for lab processing, and the customer needs to pay additional money for the processing.

It does not seem to include the processing itself or the ongoing service which follows.

I have trouble believing that the Settlement Administrator intended to recover the value of processing (in terms of the logistics of receiving and billing) the testing kit, minus the value of the kit itself, and minus the value of shipping, and minus the value of lab processing, and minus the value of ongoing user access.

\$12.50 may indeed be an appropriate value for 23andMe to receive a kit and process it to let the user know that the kit is ready for lab processing once they pay for a lab service. However, it seems to fall way short in the greater context of the 23andMe experience for which the potential Settlement Members have participated in.

If they are representing \$12.50 as covering the whole 23andMe experience and value as I describe (which I don't believe is

the case), then I ask that an audit be performed to verify the true value.

Thank you for your consideration,

Josh McCormick
Totally Kicking Ass as a Potential Settlement Member
:)

From: Josh McCormick <jmccorm@yahoo.com>
To: "info@23andmesettlement.com" <info@23andmesettlement.com>
Sent: Friday, September 15, 2017 8:54 PM
Subject: Re: Compounding gift certificates, also potential unintended meaning on "kit" definition

23andMe Settlement Administrator:

Here is a link to the saliva collection kit which I mentioned:
<http://www.cvs.com/shop/home-health-care/home-tests/hiv-tests/parental-dna-gender-tests/23andme-personal-genetic-service-saliva-collection-kit-prodid-168385>

Note that they are charging \$29.99 for the kit which is used to collect saliva that is used for genetic testing. However, outside of they, they charge a \$69 or \$169 lab fee to process it. I saw no mention of the Certificates being able to pay for lab processing, only saliva collection.

I don't see anything in the settlement which prevents 23andMe from offering those saliva collection kits on their website, and then limiting the Certificates to only be used for the kit (as the settlement requires) and not the lab processing (which the settlement does not seem to directly require).

Thank you for your time,

Josh McCormick
Totally Extraordinaire Potential Settlement Class Member ++
:)

From: Josh McCormick <jmccorm@yahoo.com>
To: "info@23andmesettlement.com" <info@23andmesettlement.com>
Sent: Friday, September 15, 2017 8:46 PM
Subject: Compounding gift certifications, also potential unintended meaning on "kit" definition

23andMe Settlement Administrator:

Question:

I may have up to FOUR gift certificates coming my way. I couldn't find anything that officially said if multiple gift certificates could be applied to a single purchase. (And if so, what happens with any excess amount?) I did read this point in the settlement agreement...

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Does "other Certificates" mean other Certificates from the settlement, or other Certificates from outside the settlement?

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I remember walking into CVS and seeing 23andMe kits on the shelf for something like \$25 each. The kits were used to collect saliva and send it to their labs. However, outside of that, people were on their own to pay for processing.

My own careful read of the language seems to allow them [23andMe] to accept the gift certificates for kits which are for the purpose of collecting saliva for analysis, but it does not seem to specifically require them to accept the gift certificates for the analysis itself. Again, just for kits for the the collection of saliva which will be tested.

If they wanted to be jerks, they could accept the gift certificates for just the saliva collection kits, and then charge extra for the processing, like they do with off-the-shelf purchases at CVS.

Thank you for your time,

Josh McCormick
Potential Settlement Class Member Extraordinaire
:)

From: [Josh McCormick](#)
To: [#NA KCC 23 and Me settlement](#)
Subject: Re: Compounding gift certificates, also potential unintended meaning on "kit" definition
Date: Saturday, September 16, 2017 12:30:35 AM

23andMe Settlement Administrator,

This has got to be my last objection for the night. I'm totally walking away from the PC now!

By continuing to read this, Settlement Administrator agrees that "Josh McCormick" is totally awesome, except if Settlement Administrator directly refutes this affirmation via email addressed directly to the named party within 144 hours from the time said message was sent. Additionally, an explicit affirmation of Settlement Administrator's positive perception of Josh McCormick (and, optionally, the value of his communications) is quite appreciated, but not required for specified positive opinion to have been considered as provided and agreed to by Settlement Administrator.

There! Quasi-legal fun stuff aside and back to serious business now...

I wanted to offer further substantiation that 23andMe's provision of a saliva sample kit (and the logistics receiving/acknowledging it) does not necessarily include any or full DNA processing or results in the wording of the agreement. This further substantiation is from 23andMe's own website:

<https://customercare.23andme.com/hc/en-us/articles/202908020-23andMe-Service-Options>

They call the actual genetic testing "Service Options" which are distinct from the saliva collection kit itself. There is the Ancestry Service for an additional \$99 *plus shipping*. There is the Ancestry Service *and* Health Service for \$199 *plus shipping*. I see no mention of the 23andMe genetic service or the results in the critical definitions used by the settlement.

Because Paragraph Two defines much of the basis for the agreement, and because the very narrow focus appears inappropriately fixated specifically upon the status of the collection kit itself (which is intended to provide data for genetic results) and little more than what the collection kit is *intended for* (but not the actual data, genetic service(s), or results themselves), my objection is that the terms of the class action settlement are deceptively confusing in a way that creates incredibly favorable conditions for the defendant, 23andMe, while appearing far more generous to all other parties than it actually is. It feels deceptive.

I would advise that the Settlement Administrator may have failed to recognize to understand some of the very exact distinctions which are being carved out in the settlement terms. I would contend that almost all Settlement Class Members will not recognize the careful distinctions which are being made (or not being made) in the settlement in regards to

what "processing" can be limited to refer to and what "results" can be limited to refer.

Thank you for your consideration,

Josh McCormick
Class Action Settlement Member Who Actually Read The
Settlement Terms and Was Shocked

From: Josh McCormick <jmccorm@yahoo.com>
To: "info@23andmesettlement.com" <info@23andmesettlement.com>
Sent: Friday, September 15, 2017 8:54 PM
Subject: Re: Compounding gift certificates, also potential unintended meaning on "kit" definition

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Josh McCormick
Totally Extraordinaire Potential Settlement Class Member ++
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To: "info@23andmesettlement.com" <info@23andmesettlement.com>
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Thank you for your time,

Josh McCormick
Potential Settlement Class Member Extraordinaire
:)

EXHIBIT D

Name	Appears in data base
TARA LEIGH KITTLE	Yes
ANDREW ESCHENAUER	Yes
AMY GAINES	Yes
JENNIFER DRUMMOND	Yes
HENRY TOWSNER	Yes
CARL KIBLER	Yes
MICHAEL BRACCO	Yes
CRAIG STRAUB	Yes
STEPHEN SLACK MD	Yes
JOHN NABHOLZ	Yes
JAMES EPPICH	Yes
RAY HARRIS	Yes
VANCE WHITE	Yes
ELIZABETH ALLEN	Yes
ELIZABETH LATENDRESSE	Yes
JAMES REDDY	Yes
PAMELA TUBBS	Yes
LYNN BUSING	Yes
ELIZABETH WILSON	Yes
PAUL MARSHALL	Name appears in database. Email address not in data base.
JANE LEVINE	Yes
CAROL CAMPBELL	Yes
ROBERT W. MOORE	Yes
PIOTR METROS	Yes
KEN BAILEY	Yes
SCOTT GIBSON	Yes
TINA BUJENOVIC	Yes
MARK & LIN MANNING	Yes
JACALYN BREWSTER	Yes
ANTHONY HATSWELL (ANTHONY BATTY)	Yes
DONNA HARTMAN	Yes
ROBERT JASINSKI	No
CHRISTINE GEISNESS	Name not in database. Email address is in data base.
RAJIV MAHADEVAN	Name not in database. Email address is in data base.
DERRICK WILLIAMS	Name not in database. Email address is in data base.