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16 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **IN AND FOR THE COUNTY OF SANTA CLARA**

18 KAREN DAVIS-HUDSON and SARAH
19 DIAZ, individually and on behalf of all
20 others similarly situated,
21
22 Petitioners,
23
24 v.
25
26 23ANDME, INC.,
27
28 Respondent.

Case No. **17CV319790**

**JOINT PETITION TO CONFIRM
CONTRACTUAL ARBITRATION AWARD
AND ENTER JUDGMENT**

19 Petitioners Karen Davis-Hudson and Sarah Diaz and Respondent 23andMe, Inc. jointly
20 request the Court enter judgment confirming an award in an arbitration, conducted according to
21 an agreement between the parties that is subject to Code of Civil Procedure section 1285, *et seq.*,
22 and enter judgment based on that award. They allege as follows:

- 23 1. This Petition commences a new action. Each Petitioner named is an individual.
24 Respondent is a corporation.
- 25 2. This Petition involves a dispute over payments made by consumers to 23andMe
26 covered by an agreement to arbitrate, as set forth below.
- 27 3. As stated in the accompanying Declaration of Alan M. Mansfield ("Mansfield
28 Decl."), the Demand filed in the arbitration alleges that on November 22, 2013, the U.S. Food

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CLERK OF COURT
SUPERIOR COURT
COUNTY OF SANTA CLARA
BY _____ DEPUTY

G. REYES

1 and Drug Administration (“FDA”) sent 23andMe a letter (the “Warning Letter”) that directed
2 Respondent to discontinue marketing the health information component of the company’s
3 Personal Genome Service (“PGS”). The claims asserted in the arbitration arose out of the
4 Warning Letter and concerned the sale of 23andMe’s PGS kits. Petitioners allege in the Demand
5 filed in the arbitration that the PGS was sold to consumers based on inaccurate or misleading
6 information regarding the PGS specifications and capabilities, and was not sold in compliance
7 with applicable federal and state laws. Respondent denies, and continues to deny, all such
8 allegations. The Demand filed in the arbitration sought damages for breach of contract, among
9 other claims, based on the payments made for the PGS kits. No final determination was made as
10 to the liability of Respondent or the amount of damages to be awarded.

11 4. This is the Court in the County where the agreement was to be performed, as
12 Respondent 23andMe, Inc. has its principal place of business in this County. The arbitration was
13 not held exclusively in any county of California. *See also* American Arbitration Association
14 Supplementary Rules for Class Arbitrations, Rule 12(c) (“Parties to a class arbitration under
15 these Supplementary Rules shall be deemed to have consented that judgment upon each of the
16 awards rendered in the arbitration may be entered in any federal or state court having jurisdiction
17 thereof.”).

18 5. Petitioners and Respondent entered into a written agreement when they ordered
19 their PGS Kits, as did other Class members. *See* Mansfield Decl., ¶ 6, submitted herewith.
20 Paragraph 28.b. of the Terms and Conditions of Service provides for arbitration of disputes
21 arising out of the agreement as follows:

22 **Applicable law and arbitration.** Except for any disputes relating to intellectual
23 property rights, obligations or infringement claims, any disputes with 23andMe
24 arising out of or relating to the Agreement (“Disputes”) shall be governed by
25 California law regardless of your country of origin or where you access 23andMe,
26 and notwithstanding of any conflicts of law principles and the United Nations
27 Convention for the International Sale of Goods. Any Disputes shall be resolved
28 by final and binding arbitration under the rules and auspices of the American
Arbitration Association, to be held in San Francisco, California, in English, with a
written decision stating legal reasoning issued by the arbitrator(s) at either party’s
request, and with arbitration costs and reasonable documented attorneys’ costs of
both parties to be borne by the party that ultimately loses. Either party may obtain

1 injunctive relief (preliminary or permanent) and orders to compel arbitration or
2 enforce arbitral awards in any court of competent jurisdiction.

3 6. An order confirming this matter was to proceed in arbitration was entered on
4 October 16, 2015 in *23andMe, Inc. v. Davis-Hudson, et al.*, U.S. District Court, Northern District
5 of California, Case No. 5:15-cv-0323-PSG (Order Denying Petition to Vacate Arbitration
6 Award). Mansfield Decl., ¶ 7.

7 7. Robert L. Brent of the American Arbitration Association was duly selected by the
8 parties and appointed as arbitrator.

9 8. The parties settled this arbitration on a class-wide basis prior to a determination
10 on the merits.

11 9. After providing notice to Class Members, the arbitration hearing approving that
12 settlement and entering the arbitration award finally approving the settlement was conducted on
13 November 15, 2017, at Orrick, Herrington & Sutcliffe, LLP, 405 Howard Street, San Francisco,
14 California 94105.

15 10. The arbitration award finally approving the settlement (“Award”) was executed
16 and entered on November 15, 2017. A copy of the Award is attached to the Mansfield Decl. as
17 Ex. 1.

18 11. A signed copy of the Award was served on Petitioners and Respondent on
19 November 15, 2017, and on persons who formally appeared in the arbitration and submitted a
20 response to the arbitrator on November 17, 2017.

21 Based on the above, Petitioners and Respondent jointly request that the Court confirm the
22 Award and enter judgment confirming the Award granting final approval of the settlement, in the
23 form submitted herewith.

24 DATED: November 29, 2017

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25
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