

No. VLC-S-S-237147
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

J. R.

Plaintiff

AND:

23ANDME HOLDING CO. and 23ANDME, INC.

Defendants

Brought under the *Class Proceedings Act*, RSBC 1996, c. 50

**ORDER MADE AFTER APPLICATION
(REPRESENTATION ORDER)**

BEFORE THE HONOURABLE JUSTICE WILKINSON)
) DECEMBER 19, 2023
)
)

ON THE APPLICATION OF the Plaintiff, J. R., coming for a hearing at Vancouver, British Columbia, on December 19, 2023; **ON HEARING** Sage Nematollahi, Counsel to the Plaintiff, and ^{B. Nosani} Mary Buttery, K.C., Counsel to the Defendants; **UPON READING** the materials filed including the Notice of Application, Affidavit No. 1 Yurim Larsen and Affidavit No. 1 of Amy McKeough; **UPON NOTING** that the Defendants do not take a position on this application; **AND UPON NOTING** that the Defendants filed and served a Jurisdictional Response on December 13, 2023;

THIS COURT ORDERS AND DECLARES THAT:

SERVICE

1. This Court declares that the time for service and filing of the Notice of Application and the affidavits in support of this application is hereby abridged and validated, so that this application is properly returnable today, and hereby dispenses with further service thereof.

REPRESENTATION OF THE PUTATIVE CLASS

2. Subject to paragraphs 7-8 hereof, the Plaintiff is hereby appointed as Representative Plaintiff to represent the Putative Class defined as follows for the purposes of the mandate outlined in paragraphs 4-6 hereof:

All natural persons residing or domiciled in Canada whose sensitive personal information was accessed by unauthorized parties or otherwise compromised in the course of or as a result of the Data Breach;

Excluded from the Class are the directors, partners, officers or senior employees of the Defendants or any of their subsidiaries;

(hereinafter, "**Putative Class**" and "**Putative Class Members**").

3. Subject to paragraphs 7-8 hereof, the law firms of KND Complex Litigation and YLAW Group (hereinafter, "**Plaintiff's Counsel**") are hereby appointed as Representative Counsel to represent the Putative Class for the purposes of the mandate outlined in paragraphs 4-6 hereof.

REPRESENTATIVES' MANDATE

4. The Representative Plaintiff and Representative Counsel's mandate is solely to address any issues arising from the implementation, construction or interpretation of the Defendants' Terms of Service dated November 30, 2023 ("**Nov 30 ToS**"), and any future Terms of Service that may be issued by the

Defendants to replace the Nov 30 ToS in the future while this proceeding is pending before the Court.

5. The Representative Plaintiff and Representative Counsel shall advise the Defendants regarding their position with respect to the Nov 30 ToS and take steps as appropriate accordingly by March 31, 2024.
6. Any dispute between the parties in relation to the construction or interpretation of the Nov 30 ToS, or its successors, shall be addressed at certification.

NO COMPROMISE OR DEROGATION OF DEFENDANTS' RIGHTS

7. This Order shall be without prejudice to any argument that the Defendants may raise on the application for certification of this proceeding under the *Class Proceedings Act*, RSBC 1996, c 50 ("**CPA**"), and its existence would not be binding, relied upon or be deemed informative in determining whether any of the criteria under the *CPA* are met.

EXCLUSIONS

8. This Representation Order shall be deemed null and it shall have no effect:
 - a. with respect to any Putative Class Member and with respect to the Defendants vis-à-vis such Putative Class Member who opts out, by written email to sn@knd.law, from this action at any time before it is certified; and/or
 - b. in the event that this action is certified by the Court, with respect to any putative Class Member and with respect to the Defendants vis-à-vis such Putative Class Member who opts out from this action in accordance with the opt-out procedure to be set out by the Court; and/or
 - c. in the event that this action is not certified.

NOTICE PROCEDURE

9. Notice of the granting of this Order shall be provided, within 10 business days from the date of this Order, as follows:
 - a. the Representative Counsel shall issue a press release substantially in the form set out in Schedule "A" of this Order;
 - b. the Representative Counsel shall post a copy of this Order on its website at <https://knd.law/class-actions/23-and-me/>; and
 - c. the Representative Counsel shall provide a copy of this Order to any person who requests it.

PROTECTIONS

10. The Representative Plaintiff and Representative Counsel shall have no liability as a result of their appointment or the fulfilment of their duties in carrying out the provisions of this Order or any further Order of the Court in these proceedings, save and except for any gross negligence or wilful misconduct on their part.
11. The appointment of Representative Counsel pursuant to this Order shall not prevent any of the individual lawyers from Representative Counsel from acting as trustee(s) of any trust that may be established for the benefit of the Putative Class in these proceedings.


COLLECTION, USE AND DISCLOSURE OF PERSONAL INFORMATION

12. This Court orders that the Representative Counsel are hereby authorized to collect, use and disclose personal information of Putative Class Members to the extent necessary or desirable to give effect to this Order, or in carrying out the terms of this Order.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND
CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED
ABOVE AS BEING BY CONSENT.



Sage Nematollahi
Counsel to Plaintiff



For Mary Buttery, K.C.
Counsel to Defendants



BY THE COURT



Registrar

SCHEDULE "A"

23andME CANADIAN CONSUMER DATA BREACH CLASS ACTION

**SUPREME COURT OF BRITISH COLUMBIA APPOINTS REPRESENTATIVE
PLAINTIFF AND REPRESENTATIVE COUNSEL TO ADDRESS TERMS OF
CUSTOMER AGREEMENTS WITH 23andMe**

VANCOUVER, BC and TORONTO, ON, _____, 2023 – The Supreme Court of British Columbia has granted a Representation Order subject to proposed class proceedings brought in the matter of *J. R. v 23andMe Holding Co et al*, Vancouver Registry, S-237147.

This class action has been brought on behalf of a proposed Class comprising of all Canadian customers of 23andMe who were affected by the data breach reported by the company in October 2023 ("**Class**"), excluding certain individuals affiliated with the Defendants.

Pursuant to the Representation Order, the plaintiff has been appointed as the Representative Plaintiff and KND Complex Litigation and YLAW Group have been appointed as Representative Counsel to address any issues arising from the implementation, construction or interpretation of the Defendants' Terms of Service dated November 30, 2023 and its successors.

23andMe's Terms of Service dated November 30, 2023 include provisions for alternative dispute resolution and individual arbitration procedures and a class action waiver, and require that customers opt out if they wish to not be bound by those terms. Pursuant to the Representation Order, Representative Plaintiff and Representative Counsel are empowered to address those issues on behalf of putative members of this class action.

Pursuant to the terms of the Representation Order:

1. The Representation Order is without prejudice to, and it does not amount to any form of compromise or derogation of, the Defendants' rights or arguments, including that the proceeding should not proceed as a class action or at all; and

2. The Representation Order shall be null and shall have no effect on any person who opts out from this class proceeding by written email to sn@knd.law, and/or in the event that this action is not certified under the *Class Proceedings Act* of British Columbia.

More information concerning this class action and a copy of the Court's Representation Order are available on Representative Counsel's website at <https://knd.law/class-actions/23-and-me/>.

Inquiries:

KND Complex Litigation

contact@knd.law