

December 11, 2023

VIA EMAIL

Hassan A. Zavareei
Tycko & Zavareei LLP
2000 Pennsylvania Ave. NW - Suite 1010
Washington, D.C. 20006
hzavareei@tzlegal.com

Re: Letters Dated November 9 and November 22

Dear Mr. Zavareei,

Our firm represents 23andMe, Inc. (“23andMe”). This responds to your letters dated November 9, 2023 and November 22, 2023 (referred to collectively as the “letter”). Although it is not expressly stated therein, 23andMe understands that this letter was written on behalf of the plaintiffs in the putative class action that was filed in the Circuit Court of Cook County on November 13, 2023, *Bacus v. 23andMe, Inc.*, Case No. 2023L011549.

In the letter, plaintiffs contend that 23andMe has violated the California Privacy Rights Act (“CPRA”), the California Confidentiality of Medical Information Act (“CMIA”), the Illinois Genetic Information Privacy Act (“GIPA”) and has committed various common law violations. For the reasons set forth below, each of the claims is without merit, and we urge you to consider the futility of continuing to pursue an action in this case.

No Breach Occurred

As a preliminary matter, the plaintiffs you purport to represent were not affected by any security breach under the CPRA. As set forth in 23andMe’s October 6, 2023 blog post¹, 23andMe believes that unauthorized actors managed to access certain user accounts in instances where users recycled their own login credentials—that is, users used the same usernames and passwords used on 23andMe.com as on other websites that had been subject to prior security breaches, and users negligently recycled and failed to update their passwords following these past security incidents, which are unrelated to 23andMe. Therefore, the incident was not a result of 23andMe’s alleged failure to maintain reasonable security measures under the CPRA.

¹ *Addressing Data Security Concerns*, 23ANDME.COM (Oct. 6, 2023), <https://blog.23andme.com/articles/addressing-data-security-concerns>.

Albany
Amsterdam
Atlanta
Austin
Berlin~
Boston
Chicago
Dallas
Delaware
Denver
Fort Lauderdale
Houston
Las Vegas
London*
Los Angeles
Mexico City+
Miami
Milan»
Minneapolis
Nashville
New Jersey
New York
Northern Virginia
Orange County
Orlando
Philadelphia
Phoenix
Sacramento
Salt Lake City
San Francisco
Seoul∞
Shanghai
Silicon Valley
Tallahassee
Tampa
Tel Aviv^
Tokyo×
Warsaw~
Washington, D.C.
West Palm Beach
Westchester County

Operates as: *Greenberg Traurig Germany, LLP;
*A separate UK registered legal entity;
*Greenberg Traurig, S.C.; *Greenberg Traurig
Santa Maria; **Greenberg Traurig LLP Foreign
Legal Consultant Office; ^A branch of Greenberg
Traurig, P.A., Florida, USA; †GT Tokyo Horitsu
Jimusho; ‡Greenberg Traurig Grzesiak sp.k.

Nevertheless, if a violation occurred, it has been remediated. Upon learning of the unauthorized access, 23andMe began investigating the matter and notified law enforcement of the incident. Further, on October 9, 2023, as a part of its ongoing efforts to protect user information, 23andMe ended all active logged-in user sessions and required a password reset on all user accounts. Additionally, on November 6, 2023, 23andMe began requiring that all of its customers use 2-step verification as an added layer of protection for their accounts. Notably, 23andMe customers have had the option to use Authenticator App 2-factor authentication since 2019.

Equally important, the information that was potentially accessed cannot be used for any harm. As explained in the October 6, 2023 blog post, the profile information that may have been accessed related to the DNA Relatives feature, which a customer creates and chooses to share with other users on 23andMe's platform. Such information would only be available if plaintiffs affirmatively elected to share this information with other users via the DNA Relatives feature. Additionally, the information that the unauthorized actor potentially obtained about plaintiffs could not have been used to cause pecuniary harm (it did not include their social security number, driver's license number, or any payment or financial information).

It should also be noted that to the extent the *Bacus* plaintiffs intended the letter to serve as a cure notice under the CPRA, the notice is untimely.

No CMIA Violation Occurred

Plaintiffs' asserted claim under the CMIA similarly fails as a matter of law. Plaintiffs have no claim because they cannot allege what "medical information" pertaining to them was allegedly disclosed without permission. California law is clear that to maintain a claim under the CMIA, plaintiffs must allege "more than individually identifiable information" about each individual was disclosed without authorization, and that the information specifically "relat[ed] to medical history, mental or physical condition, or treatment of [him or her] individual[ly]." *Eisenhower Med. Ctr. v. Sup. Ct.*, 226 Cal. App. 4th 430, 434 (2014) (holding that medical information is limited to "substantive information" about a person's "medical condition or history" that "reveal[s] medical history, diagnosis, or care" and that "[c]onfirmation that a person's medical record exists somewhere is not medical information as defined under the CMIA," nor is "the mere fact that a person may have been a patient."). Here, plaintiffs broadly allege that "personal health information . . . and genetic information was compromised." Courts have routinely rejected such claims that non-substantive information about a person constitutes medical information under CMIA. *See, e.g., Wilson v. Rater8, LLC*, No. 20-CV-1515-DMS-LL, 2021 WL 4865930, at *1 (S.D. Cal. Oct. 18, 2021) (dismissing CMIA claim because disclosure of person's "name, cellular telephone number, 'treating physician names, medical treatment appointment information, and medical treatment discharge dates and times'" did not constitute "medical information" even though it was individually identifiable).

23andMe Did Not Violate GIPA

Plaintiffs' claims under Illinois law fare no better. 23andMe does not believe that Illinois law applies here. But even if Illinois law were to apply, plaintiffs' claims are meritless. Your letter alleges that 23andMe violated GIPA because of 23andMe's alleged failure to safekeep plaintiffs' "genetic information," but, as set forth above, the incident was a result of users' failure to safeguard their own account credentials, for which 23andMe bears no responsibility. *See* 410 ILCS 513/40. Moreover, no actionable information under GIPA was disclosed. *Bridges v. Blackstone Grp., Inc.*, No. 21-CV-1091-DWD, 2022 WL 2643968, at *2 (S.D. Ill. July 8, 2022) (dismissing GIPA claim because "the Complaint . . . fails to allege that the purported information Blackstone received from Ancestry is information protected by GIPA.").

Nothing contained in this letter should be construed as a waiver of any rights and claims of 23andMe, and all such rights and remedies are reserved under law and equity.

We trust this resolves this matter.

Very truly yours,



Ian C. Ballon

cc. Rebekah Guyon
Kristin O'Carroll
Adam Korn