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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

IN RE: 23ANDME, INC., CUSTOMER DATA  
SECURITY BREACH LITIGATION

CASE NO. 24-md-03098-EMC

Hon. Edward M. Chen

**DEFENDANT 23ANDME, INC.'S  
MEMORANDUM IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

Judge: Hon. Edward M. Chen

Courtroom: 5, 17<sup>th</sup> Floor

Hearing Date: October 17, 2024

Hearing Time: 1:30 pm

1 **I. INTRODUCTION**

2 Defendant 23andMe, Inc. (“23andMe”) submits this memorandum in support of preliminary  
3 approval of the Settlement Agreement to further demonstrate the need for the preliminary injunctive relief  
4 provision in the proposed Preliminary Approval Order (ECF No. 103-2, at ¶ 22).

5 As set forth in Plaintiffs’ Motion for Preliminary Approval, 23andMe believes that the Settlement  
6 is fair, adequate, and reasonable. Further, a preliminary injunction of other litigation or arbitration claims,  
7 pending the Court’s determination of final approval, unless and until individual Settlement Class Members  
8 have received Notice and have submitted a valid request to opt out, is in line with ample authority from  
9 this Court, this District, and the Ninth Circuit, even without the additional factors that are the subject of  
10 this separate memorandum. Pursuant to the All Writs Act, 28 U.S.C. § 1651(a), and the “necessary in aid  
11 of” exception to the Anti-Injunction Act, 28 U.S.C. § 2283, the Court is empowered to enter the injunction  
12 enjoining Settlement Class Members and their representatives, pending the Court’s determination of  
13 whether the Settlement Agreement should be given final approval, from filing, commencing, prosecuting,  
14 conducting, continuing or enforcing any action or proceeding against the Released Parties insofar as such  
15 action asserts Released Claims, directly or indirectly, in any judicial, administrative, arbitral, or other  
16 forum. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998); *see also, e.g., Roberts v. AT&T*  
17 *Mobility LLC*, No. 3:15-cv-03148-EMC (N.D. Cal. Mar. 21, 2021) (Dkt. 205).

18 This MDL involves class actions brought on behalf of more than six million individuals. The  
19 Settlement Agreement is the product of three mediations and extensive arms-length negotiation, promoted  
20 by the efforts of this Court and the mediator. In addition to being a standard term necessary to protect these  
21 efforts and aid the Court’s jurisdiction over this Settlement pending final approval, the specific facts here  
22 especially warrant a temporary preliminary injunction. In addition to this MDL, 23andMe faces parallel  
23 litigation in state court and private arbitration forums on behalf of tens of thousands of Settlement Class  
24 Members asserting the same claims that are released pursuant to the Settlement Agreement. Moreover,  
25 23andMe’s financial condition is well documented in the public record. *See, e.g.*, ECF No. 103-1 pp. 11-  
26 12, 34-36. Individual claimants who knowingly choose to opt-out of the proposed Settlement may attempt  
27 to proceed in state court or arbitration should they decline the benefits of the Settlement Agreement  
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1 following Notice. However, such proceedings should not move forward until that time. In particular, it is  
2 plain that counsel driving the mass arbitration filings against 23andMe—which includes at least one firm  
3 that is also counsel of record for a named plaintiff in this MDL—does not intend to initiate arbitration to  
4 benefit the Settlement Class. Indeed, these mass arbitrations were filed directly in response to learning that  
5 the MDL was on the verge of being, or had been, settled. These arbitrations are intended to and would  
6 undermine the Settlement Agreement by threatening 23andMe with filing fees that will nearly eclipse the  
7 Qualified Settlement Fund. In light of 23andMe’s financial condition, it is in the interests of the Settlement  
8 Class and 23andMe to enjoin those proceedings unless and until Settlement Class Members have received  
9 notice of the Settlement and individually decided whether to exercise their right to opt out.

## 10 **II. RELEVANT BACKGROUND**

### 11 **A. The Security Incident**

12 In early October 2023, an unauthorized third party was able to gain access to certain 23andMe  
13 customer accounts through a credential stuffing attack because the username and password used on  
14 23andMe.com were the same as those that were used on other websites that were previously compromised  
15 or otherwise available (“Stuffed Accounts”). The information accessed in the Stuffed Accounts by the  
16 unauthorized third party varied by user account, and may have included health information. *See Addressing*  
17 *Data Security Concerns*, (Oct. 6, 2023), 23ANDME.COM, [https://blog.23andme.com/articles/addressing-](https://blog.23andme.com/articles/addressing-data-security-concerns)  
18 [data-security-concerns](https://blog.23andme.com/articles/addressing-data-security-concerns). Using this access, an unauthorized third party was able to access the DNA Relatives  
19 or Family Tree profile information of certain 23andMe customers that were connected through 23andMe’s  
20 optional DNA Relatives feature as genetic relatives of one or more of Stuffed Account customers, and the  
21 unauthorized actor posted a subset of this information (but not health information) to the dark web. *Id.*

22 23andMe customers may participate in the DNA Relatives features if they elect to do so. *See DNA*  
23 *Relatives Privacy & Display Settings*, 23ANDME.COM, [https://customercare.23andme.com/hc/en-](https://customercare.23andme.com/hc/en-us/articles/212170838-DNA-Relatives-Privacy-Display-Settings)  
24 [us/articles/212170838-DNA-Relatives-Privacy-Display-Settings](https://customercare.23andme.com/hc/en-us/articles/212170838-DNA-Relatives-Privacy-Display-Settings). The DNA Relatives feature allows users  
25 to share certain information about themselves with other genetic relatives, and see their genetic relatives,  
26 but only if their genetic relatives have also chosen to participate in the DNA Relatives feature. *Id.* In other  
27 words, once a customer elects to participate in the DNA Relatives feature, they have agreed to identify

1 themselves as a genetic relative of any other unidentified and unknown customer of 23andMe who has also  
2 elected to participate in the feature—it is neither private nor confidential, and it is information that was  
3 voluntarily disclosed to thousands of other unknown 23andMe customers prior to the Security Incident.  
4 None of the information available to users of the features can be used to cause financial or pecuniary harm,  
5 or even impersonate a person based on “genetics”—it is only information indicating a potential relationship  
6 between users of the feature.

7       Upon learning of the unauthorized access, 23andMe promptly notified customers and law  
8 enforcement of the Incident. 23andMe notified the public of the Incident via a blog post on October 6,  
9 2023, and directly notified all customers via email on or around October 10, 2023.

10       Shortly after 23andMe disclosed the Security Incident, almost 40 lawsuits were filed in federal  
11 courts around the country, primarily in the Northern District of California.<sup>1</sup> The lawsuits allege that  
12 23andMe had failed to properly protect customer information in accordance with its responsibilities, had  
13 inadequate data security protocols, was unjustly enriched by the use of information of the impacted  
14 individuals, violated various state genetic information privacy statutes and other state consumer statutes,  
15 failed to provide adequate notice pursuant to various breach notification statutes or common law duty,  
16 invasion of privacy and other claims related to the Security Incident.

17       A thorough summary of the federal court litigation to date in this MDL is provided in Plaintiffs’  
18 Motion for Preliminary Approval. ECF No. 103-1 pp. 3-4.

### 19       **B. The State Court Actions**

20       In addition to this MDL, parallel litigation against 23andMe has been initiated in California state  
21 court and private arbitration forums. Currently four separate state court actions filed in two different  
22 Superior Courts in California assert claims arising from the Security Incident. *See* Declaration of Rebekah  
23 S. Guyon (“Guyon Decl.”), ¶¶ 2-5 (Sept. 12, 2024).

- 24       • *Vasquez v. 23andMe, Inc.*, Case No. 23CV424996, was filed in the Santa Clara Superior  
25 Court on October 31, 2023. *Vasquez* asserts claims arising from the Security Incident on  
26 behalf of a putative class of California residents for (1) negligence; (2) breach of implied  
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28 <sup>1</sup> A total list of all lawsuits filed is attached hereto as Exhibit 1.

1 contract; (3) breach of implied covenant of good faith and fair dealing; (4) unjust  
 2 enrichment; (5) violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code  
 3 §§ 17200, *et seq.*; (6) violation of the California Consumer Privacy Act, Cal. Civil Code §§  
 4 1798.100, *et seq.* and §1798.150(a); and (7) violation of the California Customer Records  
 5 Act, Cal. Civil Code §§ 1798.80, *et seq.*—the same claims that are asserted in the  
 6 Consolidated Class Action Complaint in the MDL, and the same claim on behalf of the same  
 7 Settlement Class Members that are released in the Settlement Agreement. Guyon Decl., Ex.  
 8 A.

- 9 • *Morgenstern v. 23andMe, Inc.*, Case No. 23-610816, was filed in San Francisco Superior  
 10 Court on December 4, 2023. *Morgenstern* asserts claim arising from the Security Incident  
 11 on behalf of a putative class of California residents for (1) negligence; (2) negligence *per*  
 12 *se*; (3) breach of implied contract; (4) invasion of privacy; (5) conversion; and (6) violation  
 13 of the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 Based on  
 14 “Unfair” and/or “Unlawful” Acts and Practices—the same claims that are asserted in the  
 15 Consolidated Class Action Complaint in the MDL, and the same claim on behalf of the same  
 16 Settlement Class Members that are released in the Settlement Agreement. Guyon Decl., Ex.  
 17 B. Plaintiffs’ counsel in *Morgenstern* (Scott+Scott Attorneys and Lexington Law Group)  
 18 are also plaintiffs’ counsel in federal case *Scott v. 23andMe Holding Co., 23andMe, Inc.*  
 19 (Case No. 23-cv-5980) pending in the MDL.

- 20 • *Wilkus v. 23andMe, Inc.*, Case. No. 24CV429673, was filed on January 23, 2024 in Santa  
 21 Clara Superior Court. *Wilkus* is not a class action, but a consolidated individual case in  
 22 which 13 residents of Illinois assert claims arising from the Security Incident for (1)  
 23 violation of the Illinois Genetic Information Privacy Act, 410 Ill. Comp. Stat. Ann. 513, *et*  
 24 *seq.*; (2) negligence; (3) breach of actual and implied contract; (4) invasion of privacy –  
 25 intrusion upon seclusion; and (5) unjust enrichment—the same claims that are asserted in  
 26 the Consolidated Class Action Complaint in the MDL, and the same claim on behalf of the  
 27 same Settlement Class Members that are released in the Settlement Agreement. Guyon  
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1 Decl., Ex. C.

- 2 • *Shaw v. 23andMe, Inc.*, Case No. TC24-2263, was filed on July 10, 2024 in Santa Clara  
3 Superior Court. Like *Wilkus*, *Shaw* is not a class action, but a consolidated individual case  
4 in which residents of California assert claims arising from the Security Incident for (1)  
5 violation of the Illinois Genetic Information Privacy Act, 410 Ill. Comp. Stat. Ann. 513, *et*  
6 *seq.*; (2) negligence; (3) breach of actual and implied contract; (4) invasion of privacy –  
7 intrusion upon seclusion; and (5) unjust enrichment—the same claims that are asserted in  
8 the Consolidated Class Action Complaint in the MDL, and the same claim on behalf of the  
9 same Settlement Class Members that are released in the Settlement Agreement. Guyon  
10 Decl., Ex. D.

11 On January 24, 2024, Morgenstern filed a Petition for Coordination with the Judicial Council  
12 (“Petition for Coordination”) that seeks to coordinate the *Morgenstern* and *Vasquez* cases. Guyon Decl.,  
13 Exs. E, F. 23andMe thereafter filed a Notice of Potential Add-On Case to coordinate *Wilkus* and *Shaw*  
14 with *Morgenstern* and *Vasquez* in Judicial Council Coordination Proceeding No. 5315. Guyon Decl., Ex.  
15 G. *Morgenstern*, *Vasquez*, and *Wilkus* have been stayed pending a case management conference before  
16 Judge Charles Adams in Santa Clara Superior Court on October 31, 2024. Guyon Decl., Ex. H, I. 23andMe  
17 has not been served with the complaint in *Shaw*. Guyon Decl. ¶ 5.

### 18 C. The Arbitrations

19 To date, as detailed in the concurrently filed under seal in the Declaration of Rebekah S. Guyon,  
20 numerous arbitrations have been filed against 23andMe in which claimants assert claims arising from the  
21 Security Incident. Guyon Decl. ¶ 11.

22 On February 14, 2024, individual arbitrations were filed against 23andMe with JAMS in which  
23 claimants, residents of California and Illinois, assert claims against 23andMe arising from the Incident.  
24 Guyon Decl. ¶ 12. These include claims for negligence, negligence *per se*, breach of implied contract,  
25 unjust enrichment, and invasion of privacy, which are duplicative of the claims asserted on behalf of the  
26 nationwide class in the MDL. ECF No. 78, ¶¶ 525-638; Guyon Decl. ¶ 12. California claimants further  
27 assert alleged violations of California’s Unfair Competition Law, California Consumer Privacy Act, and  
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1 California Customer Records Act—the same claims that are asserted on behalf of the nationwide class and  
2 California subclass in the MDL, and which are Released Claims in the Settlement Agreement. ECF No.  
3 78, ¶¶ 639-654, 688-709.

4 On July 10, 2024, one day after the Parties publicly informed the Court that they were close to  
5 accepting a mediators proposal resolving claims on behalf of the putative U.S. class (*see* ECF No. 79),  
6 additional individual arbitrations were filed against 23andMe with JAMS asserting claims arising from the  
7 Incident. Guyon Decl. ¶ 13. In these arbitrations, residents of California, Illinois, and other jurisdictions  
8 represented by named plaintiffs in the Consolidated Class Action Complaint assert nearly identical claims  
9 to those that are alleged in the Complaint here, and which are Released Claims in the Settlement  
10 Agreement. Guyon Decl. ¶ 13.

11 On August 28, 2024, additional individual arbitration demands were filed with JAMS in which  
12 claimants assert claims arising from the Incident. Guyon Decl. ¶ 17. Counsel representing those claimants  
13 filed the day after counsel for 23andMe informed arbitration counsel of the executed Term Sheet, which  
14 was a matter of public record as of July 30, 2024. *See* ECF No. 89. On August 29, 2024, the same firm  
15 filed additional individual arbitration demands with JAMS in which claimants assert claims arising from  
16 the Incident. Guyon Decl. ¶ 17. These August 28 and 29 demands assert claims on behalf of residents of  
17 California, Illinois, and twelve other states represented by named plaintiffs in the Consolidated Class  
18 Action Complaint for alleged violations of unspecific consumer protection and common law violations,  
19 the California Privacy Rights Act, the California Confidentiality of Medical Information Act, and for  
20 Illinois residents, the Illinois Genetic Information Privacy Act—the same claims that are asserted in the  
21 Consolidated Class Action Complaint in the MDL, and the same claim on behalf of the same Settlement  
22 Class Members that are released in the Settlement Agreement.

23 As of August 29, 2024, 23andMe has been informed by four additional firms that they intend to  
24 initiate individual arbitration demands asserting claims arising from the Incident. Guyon Decl. ¶¶ 18-20.

### 25 **III. ARGUMENT**

#### 26 **A. Legal Standard**

27 The All Writs Act authorizes federal courts to “issue all writs necessary or appropriate in aid of  
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1 their respective jurisdictions and agreeable to the usages and principles of law.” 28 U.S.C. § 1651; *see*  
2 *Keith v. Volpe*, 118 F.3d 1386, 1390 (9th Cir. 1997) (holding the All Writs Act “empowers the federal  
3 courts to enjoin state proceedings that interfere, derogate, or conflict with federal judgments, orders, or  
4 settlements”). The All Writs Act is limited only by the Anti-Injunction Act, which provides that a federal  
5 court “may not grant an injunction to stay proceedings in a state court except as expressly authorized by  
6 Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.” 28  
7 U.S.C. § 2283.

8 The Court’s authority to issue injunctions under the All Writs Act and the exception to the Anti-  
9 Injunction Act is not limited to proceedings in state court; rather, federal courts have broad injunctive  
10 powers to stay or enjoin a variety of activities to protect their own jurisdiction. Citing the All Writs Act,  
11 28 U.S.C. § 1651, the Ninth Circuit has determined that a federal court’s injunctive powers extend to  
12 enjoining the filing and further prosecution of arbitration proceedings, and the district courts have  
13 frequently done so. *See Hartley v. Stamford Towers Ltd. P’ship*, 36 F.3d 1102 (9th Cir. 1994)  
14 (unpublished). Courts outside the Ninth Circuit have found the same. *See, e.g., In re Y & A Grp. Sec. Litig.*,  
15 38 F.3d 380, 382, 382–83 (8th Cir. 1994) (relying in part on the All Writs Act in concluding that “[n]o  
16 matter what, courts have the power to defend their judgments as res judicata, including the power to enjoin  
17 or stay subsequent arbitrations”); *Allstate Ins. Co. v. Elzanaty*, 929 F. Supp. 2d 199, 219–22 (E.D.N.Y.  
18 2013) (“Court finds that it has the power to temporarily stay a pending private arbitration as well as to  
19 temporarily enjoin any future private arbitrations . . . the Court grants the Plaintiffs’ motion to temporarily  
20 stay the pending arbitrations and to temporarily enjoin the Defendants from filing any additional  
21 arbitrations”); *United States v. Mason Tenders Dist. Council of Greater New York*, 205 F. Supp. 2d 183,  
22 188 (S.D.N.Y. 2002) (noting that, under the All Writs Act, federal courts have the “authority to enjoin and  
23 bind non-parties when needed to preserve the court’s ability to reach or enforce its decision in a case over  
24 which it has proper jurisdiction”).

25 **B. The Agreed-Upon Injunction Is Necessary And Appropriate Under The All Writs Act**

26 Ample authority within the Ninth Circuit and elsewhere supports the issuance of the preliminary  
27 injunction agreed upon in the Settlement Agreement here pursuant to the All Writs Act and the Anti-  
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1 Injunction Act. In *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998), the Ninth Circuit affirmed the  
 2 district court’s temporary stay pending final approval of a nationwide class action settlement, holding that,  
 3 “[a]lthough comity requires federal courts to exercise extreme caution in interfering with state litigation,  
 4 federal courts have the power to do so [under the All Writs Act and Anti-Injunction Act] when their  
 5 jurisdiction is threatened.” 150 F.3d 1011, 1025 (9th Cir. 1998), overruled on other grounds by *Wal-Mart*  
 6 *Stores, Inc. v. Dukes*, 564 U.S. 338 (2011); *see also Sandpiper Vill. Condo. Ass’n, Inc. v. La.-Pac. Corp.*,  
 7 428 F.3d 831, 845 (9th Cir. 2005) (explaining that *Hanlon* “recognized that a temporary stay pending  
 8 settlement of the nationwide class action was appropriate under the All Writs Act and the Anti-Injunction  
 9 Act because concurrent state proceedings at such a sensitive stage in the federal proceedings would have  
 10 threatened the jurisdiction of the district court”).

11 This Court and other Judges in this district have previously granted similar injunctive relief in  
 12 preliminarily approving class action settlements.<sup>2</sup> In *Roberts v. AT&T Mobility LLC*, for example, this  
 13 Court ordered a similar injunction as agreed upon in the Settlement Agreement barring Settlement Class  
 14 Members from filing or prosecuting claims “in any judicial, administrative, arbitral or other forum”  
 15 pending final approval. No. 3:15-cv-03148-EMC (N.D. Cal. Mar. 21, 2021) (Dkt. 205) at 11, ¶ 36.<sup>3</sup>

16 Other district courts within the Ninth Circuit have also granted similar preliminary injunctions

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17 <sup>2</sup> *See, e.g., In re MyFord Touch Consumer Litig.*, No. 13-CV-03072-EMC, 2019 WL 1411510, at  
 18 \*16 (N.D. Cal. Mar. 28, 2019) (“all Members of the Settlement Classes who do not validly request  
 19 exclusion from the Settlement Classes shall be enjoined from commencing or prosecuting any action, suit,  
 20 proceeding, claim, or cause of action in any court or before any tribunal” pending final settlement  
 21 approval); *In re: Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prod. Liab. Litig.*, No. MDL 2672  
 22 CRB (JSC), 2016 WL 6248426, at \*28 (N.D. Cal. Oct. 25, 2016) (enjoining class members “who have not  
 23 properly opted out . . . from commencing, filing, initiating, instituting, pursuing, maintaining, enforcing or  
 24 prosecuting, either directly or indirectly, any Released Claims in any judicial, administrative, regulatory,  
 25 arbitral or other proceeding, in any jurisdiction or forum . . .”).

26 <sup>3</sup> *See also Keirsev v. eBay, Inc.*, No. 12-CV-01200-JST, 2013 WL 5755047, at \*7 (N.D. Cal. Oct. 23,  
 27 2013) (“Plaintiff and all members of the Class and any other person, representative, or entity acting on  
 28 behalf of any members of the Class are, until the Fairness Hearing, barred and enjoined from filing,  
 commencing, prosecuting, maintaining, intervening in, participating in (as members of a class action or  
 otherwise), any claim, lawsuit, arbitration, administrative, regulatory or other proceeding arising out of the  
 Released Claims against any of the Released Persons.”); *In re Hewlett-Packard Co. S'holder Derivative*  
*Litig.*, No. 3:12-CV-06003-CRB, 2015 WL 1153864, at \*7 (N.D. Cal. Mar. 13, 2015) (granting preliminary  
 injunction of “filing, commencing, prosecuting, intervening in, participating in, or receiving any benefits  
 or other relief from any other lawsuit, arbitration, or administrative, regulatory or other proceeding . . .”  
 pending final approval).

1 pending final settlement approval. *See, e.g., Mercado v. Volkswagen Grp. of Am., Inc.*, No.  
2 518CV02388JWHSPX, 2021 WL 8773053, at \*5 (C.D. Cal. Nov. 4, 2021) (“Pending the Court’s  
3 determination of whether to grant final approval of this Settlement, all Settlement Class Members and/or  
4 their representatives are preliminarily barred from commencing, prosecuting, continuing to prosecute, or  
5 participating in any action or proceeding against any of the Released Parties (as defined in the Settlement  
6 Agreement), in any court, tribunal or other forum . . . pending its determination as to final approval of this  
7 Settlement.”); *Hartranft v. TVI, Inc.*, No. SACV1501081CJCDFM, 2019 WL 1746137, at \*6 (C.D. Cal.  
8 Apr. 18, 2019) (preliminarily enjoining all class settlement members and their representatives “from  
9 commencing or prosecuting against the Released Parties any action or proceeding in any court or tribunal  
10 asserting any of the Released Claims” pending final settlement approval).

11 There are currently four separate state court actions filed against 23andMe in two different Superior  
12 Courts in California related to the Security Incident. These cases encompass the same claims, same putative  
13 classes or class members, and, for at least one plaintiff, the same counsel as the MDL cases that are now  
14 before this Court. Guyon Decl. ¶¶ 2-10.

15 Moreover, individual arbitration demands have been recently filed against 23andMe asserting  
16 claims based on the identical factual predicate as the Released Claims under the Settlement Agreement.  
17 While each of these mass arbitration claims individually has limited potential value, if the claimants (or  
18 their counsel) pay their filing fees and the claims move forward in the arbitral forum, 23andMe’s ability to  
19 pay the Qualified Settlement Fund is threatened. *See* Guyon Decl. ¶ 21. Indeed, it is clear from the timing  
20 of these mass arbitrations—directly in response to public filings confirming the Settlement Agreement and  
21 conversations with 23andMe’s counsel confirming the same (Guyon Decl. ¶¶ 12-17)—that these  
22 arbitrations are not intended to benefit the Settlement class, but to undermine the Settlement Agreement  
23 and jeopardize 23andMe’s financial condition.

24 Pursuant to Federal Rule of Civil Procedure 23(d), which “vests a district court with the authority  
25 and discretion to protect the interests and rights of class members and to ensure its control over the integrity  
26 of the settlement approval process,” *Hanlon*, 150 F.3d at 1025, the Court is empowered and should grant  
27 23andMe’s request for injunctive relief to protect the interests of the class members in this MDL. Indeed,  
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1 the parallel state court actions and mass arbitration proceedings asserting the same claims on behalf of  
2 Settlement Class Members threaten this Court’s jurisdiction, and a temporary stay is warranted to effectuate  
3 this nationwide class action settlement. The Settlement Agreement includes the resolution of the same  
4 claims asserted against 23andMe in the parallel state court actions and the filed and threatened arbitration  
5 proceedings. ECF No. 103-2 at ¶ 37. Following preliminary approval of the Settlement, the notice plan and  
6 notice materials will be disseminated to the Class and will discuss the terms of the proposed Settlement  
7 and their rights as Settlement Class Members. *Id.* at ¶¶ 74-79. Settlement Class Members should be allowed  
8 to evaluate their options under the Settlement individually without potentially confusing competing notices  
9 or communication from state court cases and ongoing individual arbitrations involving the same claims.

10 Competing actions would jeopardize the realization of the Settlement, interfere with this Court’s  
11 ability to manage the settlement, and potentially cause unnecessary confusion for Settlement Class  
12 Members. *See, e.g., In re Volkswagen*, 229 F. Supp. 3d at 1073 (granting a stay of all state-court actions  
13 relating to released claims in a MDL putative class action settlement, finding that a state court’s disposition  
14 of claims similar to or overlapping the released claims would implicate the same legal and evidentiary  
15 issues and, thus, such action would threaten the Court’s jurisdiction); *Jacobs v. CSAA Inter-Ins.*, 2009 WL  
16 1201996, at \*3 (N.D. Cal. May 1, 2009) (invoking the “necessary in aid of jurisdiction” exception to enjoin  
17 named and absent members from participating in a state court action relating to claims that are similarly  
18 asserted in the federal action as necessary and appropriate to preserve this court’s jurisdiction over the  
19 approval and administration of the class action settlement); *In re ZF-TRW Airbag Control Units Prod.*  
20 *Liab. Litig.*, 2023 WL 6194109, at \*26 (C.D. Cal. July 31, 2023) (issuing a preliminary injunction to remain  
21 in effect until final approval of the settlement agreement, finding that the potential filing of “copycat  
22 lawsuits in other jurisdictions” could impose on the court’s jurisdiction and ability to manage the settlement  
23 process). The All Writs Act is properly invoked where, as here, actions in state court and other parallel  
24 proceedings “threaten[] to interfere with the federal court’s orderly handling of the massive federal  
25 litigation.” *Newbe v. Enron Corp.*, 338 F.3d 467, 474 (5th Cir. 2003).

26 Moreover, without the injunction, the threat of the ongoing state court cases and arbitration  
27 proceedings undermines the ability of 23andMe to fund the settlement at final approval and this Court’s  
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1 jurisdiction to oversee and enforce the settlement. As shown in the concurrently-filed Motion for  
2 Preliminary Approval, 23andMe is in an extremely uncertain financial condition. *See* ECF No. 103-1 pp.  
3 11-12, 34-36. The filed or threatened mass arbitration claims threaten to impose exorbitant filing fees on  
4 23andMe, presumably intended to force the company to enter into different mass settlements with each  
5 counsel threatening mass arbitration claims. Such settlements would benefit only a very limited number of  
6 the members of the Settlement Class, and the mass arbitration counsel who have orchestrated that strategy.  
7 Alternatively, if 23andMe were to be forced to pay the filing fees, it would call into question its ability to  
8 fund the Settlement here. This threat undermines the Court’s facilitation of the Parties’ collaborative efforts  
9 to achieve a class-wide Settlement for the benefit of all 6.4 million members of the Settlement Class under  
10 the Court’s jurisdiction and supervision.

11 Under the All Writs Act, this Court has the power to “issue all writs necessary or appropriate” to  
12 protect the Court’s continuing jurisdiction over complex litigation and ongoing global settlement efforts  
13 from competing state and arbitration proceedings that threaten to derail the steps taken by the Court and  
14 the Parties. 28 U.S.C. § 1651. Where, as here, parallel proceedings threaten to impede the Parties’  
15 Settlement and the federal MDL Court’s ability to enforce the Settlement Agreement, an injunction  
16 enjoining the parallel proceedings is proper.

17 **IV. CONCLUSION**

18 For these reasons, pursuant to 28 U.S.C. §§ 1651(a) and 2283, the Court should issue a preliminary  
19 injunction enjoining Settlement Class Members and their representatives from filing or pursuing any  
20 Released Claims, including in state court or an arbitral forum, pending the Court’s final approval of the  
21 Settlement Agreement, unless and until they have received Notice and have submitted a valid request to  
22 individually exclude themselves from the Settlement Class under the process set out in the Settlement  
23 Agreement.

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