

CANADA / JUDGMENT

23andMe Holding Co. (Re)

2025 BCSC 1067

COURT

Supreme Court of British Columbia

DECIDED

26 May 2025

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2025 BCSC 1067 23andMe Holding Co. (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

23andMe Holding Co. (Re),

2025 BCSC 1067

Date: 20250526

Docket: S253696

Registry: Vancouver

In the Matter of The Companies' Creditors Arrangement Act,

R.S.C. 1985, c. C-36 As Amended

And

In the Matter of 23andMe Holding Co. and 23andMe, Inc.

Corrected Judgment: The text of the judgment was corrected on the cover page on July 23, 2025

Before: The Honourable Mr. Justice D.M. Masuhara

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner, 23andMe Holding Co.:

W. Clareman

J. Choi

M. Buttery

B. Noga

Counsel for the Petitioner, M. Kvarda 23andMe, Inc.:

L. Williams

A. Bowron

Respondent and Putative Representative Plaintiff in Action #S237147:

S. Nematollahi

Place and Date of Hearing:

Vancouver, B.C.

May 20, 2025

Place and Date of Judgment:

Vancouver, B.C.

May 26, 2025

- [1] THE COURT: This is my ruling of the matters heard May 20, 2025 in this CCAA proceeding.
- [2] There are two applications before me, one by the petitioner, a foreign representative, and the other by the putative representative in the proposed class action against the debtors that has been filed in this court.

Background

- [3] The background is that the debtor companies carry on a human genetics and telehealth business that offers direct customer genetic testing through saliva collection kits as well as online healthcare services. The company has experienced for some time difficulties with growth in its business, liquidity, and more recently, the access by an unauthorized entity of 0.1% of user accounts, including ancestry information and health related information based upon the user's genetics.
- [4] The personal information access relates to approximately seven million customers, and I will refer to this event as the "cyber incident." This event is what crystallized the need for the debtors to seek protection under Chapter 11 of the US Code before the US Bankruptcy Court.

The US Bankruptcy Proceedings

- [5] On March 23, 2025, the debtors commenced Chapter 11 proceedings before the Eastern District of Missouri US Bankruptcy Court. An automatic stay then issued. On March 24, 2025, the debtors filed a motion in that court for an order establishing bar dates for filing proofs of claim and approving the form and manner of the notice.

- [6] On April 30, 2025, the bankruptcy court issued an order establishing a general bar date requiring the filing of a proof of claim on or before July 14, 2025. The notice provisions are also set out in the order. Paragraph 28 of the order addresses the process or requirements on law firms representing more than 25 cyber security incident claimants on filing a consolidated claim.
- [7] The bar date order set out a 75-day period to file a proof of claim in respect to the cyber security incident and which then led to the deadline I have mentioned of July 14, 2025.
- [8] The petitioner seeks an initial recognition order:
1. declaring Matthew Kvarda as the "foreign representative" of the 23andMe Holding Co. and 23andMe, Inc. He is the chief restructuring officer of the debtors;
 2. declaring the centre of main interests for the recognition debtors as the United States and recognizing the cases commenced by the recognition debtors under Chapter 11 of the US Code before the US Bankruptcy Court as the foreign main proceedings under Part IV of the CCAA; and
 3. granting a stay of proceedings in respect of the recognition debtors and ordering the mandatory relief as set out in s.48(1) of the CCAA and the discretionary relief under s.49(1) of the CCAA.
- [9] The petitioner also seeks a Supplemental Recognition Order recognizing and giving full force and effect in all provinces and territories of Canada to the following orders of the US Bankruptcy Court:
- (1) the order granting motion for Joint Administration;
 - (2) Order: a. establishing bar dates for the filing of proofs of claim and approving the form and manner of the notice thereof; and
b. granting related relief; and
 - (3) Order: a. authorizing Matthew Kvarda to act as Foreign Representative; and
b. granting related relief.

Further, granting additional stays and protections in respect of the recognition debtors consistent with the Model Supplemental Order in B.C.

- [10] Section 47 of the CCAA mandates that if the recognition sought relates to a foreign proceeding and that the applicant is a foreign representative in respect of the foreign proceeding, then the recognition order is to be granted. Under s.48, on making of a recognition order the court is to make an order staying under specified terms all proceedings taken or that might be taken against the debtor company, all subject to any terms and conditions the court considers appropriate.

[11] The plaintiff in the putative class action (action #S237147, J.R. v. 23andMe Holdings and 23andMe, Inc. commenced in this Court October 20, 2023) says it consents to the orders but on specified terms, which I will set out shortly. The present applicants are not agreeable to them.

[12] I will note that at this stage the proposed class action has not been certified; however, an order was granted by Justice Wilkinson on December 19, 2023 permitting the plaintiff J.R. to represent the putative class defined as:

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.

I would add that the data breach is defined in the pleadings as having occurred in 2023.

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

[13] KND Complex Litigation and YLaw were appointed as representative counsel for the specified mandate, which reads as follows under the order of Wilkinson J.:

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.

[14] The subject terms of service contain a mandatory arbitration of disputes provision that requires the use of arbitration on an individual basis to resolve disputes in certain circumstances rather than jury trials or class action lawsuits.

[15] The representation order also is stated to be without prejudice to any argument that the defendants may raise on the application for certification and the existence of the order is not binding, relied upon, or be deemed informative in determining whether any of the criteria under the Class Proceedings Act are met.

[16] I also note that a second proposed class action was filed by counsel in the first class action, which I am told adds the directors and auditor of the debtors but is otherwise the same as the first action. This, it appears, is on top of an earlier application to amend the first class action to add the said parties. The defendants, I am advised, have challenged the steps taken by plaintiff's counsel.

[17] In the present application of the representative plaintiff, the plaintiff says that it is seeking an order "restating and reinstating the order of Wilkinson J. of December 19, 2023."

However, there are considerably more terms set out in the Wilkinson J. order and on my review, they appear more extensive than dealing solely with the terms of service. This can be seen in paragraph 4 of the proposed order which reads:

The representative plaintiff's and representative counsel's mandate shall specifically and for avoidance of any doubt include any matters concerning 23andMe's proceedings within these proceedings as well as the proceedings brought under Chapter 11 of the US Bankruptcy Code in the US Bankruptcy Court for the Eastern District of Missouri, Eastern Division.

[18] The applicant also seeks in paragraph 5 of the proposed order the right to file a single claim within this proceeding or the US Bankruptcy proceeding on behalf of the Canadian class members in relation to claims arising in the proposed class proceedings and to take such steps as necessary or desirable to address, adjudicate, or otherwise resolve such claim. I also note absent from the proposed order is the without prejudice terms of the representation order.

Discussion

[19] I have been taken to the materials by counsel for the petitioner/applicant and I am satisfied that the requirements under s.47 have been established and, in my view, the class action respondent has not raised any issues regarding the requirements under the said section. Accordingly, the initial recognition order is granted.

[20] I also find that the US Bankruptcy Court is presiding over the plenary proceeding, and I do recognize the US proceeding as the foreign main proceeding under Part IV of the CCAA.

[21] The role of this court in circumstances as in the present is different, as it is to determine if recognition has been established and thereafter to provide under s.52 of the CCAA the stated maximum cooperation in this case. There is no substantive parallel CCAA proceeding.

[22] While the putative representative plaintiff was not provided notice of the application in the bankruptcy court proceedings, it was provided notice of the order that issued and has been through counsel engaged in communications with counsel for the debtor and foreign representative.

[23] It is apparent from reading the materials that considerable effort went into the negotiation and settlement of the notification terms, the manner of filing claims, either individual and by group, and the bar date in the US proceedings. There are many class actions filed, federal investigations and state investigations, foreign investigations, a multitude of arbitration claims, all of which involve counsel in relation to the cyber incident.

- [24] In support of this point, claims regarding the cyber incident were provided separate attention and provisions as a result of the involvement of many class action counsel and States' AGs, and while the present putative representative was not involved, there were many entities that had similar issues whose input went into the settlement of the approved terms.
- [25] As the bar date will not expire until July 14, 2025, there is ample time for the putative representative plaintiff to seek an appearance before the US Bankruptcy Court to raise its issues.
- [26] I also note that all former customers and current customers, including those in Canada, as I have said, were provided notice through various channels identified and pursuant to the terms of the US bar date order.
- [27] Also, as I have mentioned, the application for restatement and reinstatement is not a reiteration of the original order. As I see it, there are a number of issues identified by Ms. Buttery for the 23andMe entities in their application response and I refer specifically to paragraphs 33(a) to (e) in her submissions. The proper forum to raise the issues and relief sought by the putative plaintiff is not in the proceeding before me but is the US Bankruptcy Court.

Conclusion

- [28] The original recognition order is granted. The supplemental recognition order is granted. The application of the putative class representative plaintiff is dismissed. The resulting stay will obviously impact the class action proceedings that have been filed in this court.
- [29] That concludes my ruling. I will receive any submissions.
- [30] CNSL L. Williams: No submissions, Justice, but I do have vetted orders if you'd like to see them.
- [31] THE COURT: Okay. Hearing no further submissions I will receive - you can hand up your vetted orders.
- [32] CNSL L. Williams: Thank you, Justice. The first one is the initial. The second one is the supplemental. There's the second order. And the reason it's so large is it has the US orders attached to the back.
- [33] THE COURT: It is just the one that I sign, right? There is nothing else?
- [34] CNSL L. Williams: Correct. It just schedules the US orders to the back and the guidelines.
- [35] THE COURT: Any other business for today?
- [36] CNSL L. Williams: No, Justice. Not from us.
- [37] THE COURT: Okay. Thank you very much.
- [38] THE CLERK: Thank you. Order in court.

"Masuhara J."

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