

Page Printed From:

<https://www.law.com/therecorder/2024/06/03/lawyers-vying-for-23andme-data-breach-leadership-fear-bankruptcy-imminent/>

SPECIAL REPORTS >

Litigation: Editor's Picks

NOT FOR REPRINT

NEWS

Lawyers Vying for 23andMe Data Breach Leadership Fear Bankruptcy Imminent

U.S. District Judge Edward Chen heard arguments on Monday from more than a dozen lawyers vying for leadership of the 23andMe data breach litigation.

June 03, 2024 at 05:59 PM

Class Actions

**Amanda Bronstad**

staff reporter



What You Need to Know

- Monday's hearing, in San Francisco, comes after 23andMe's annual report disclosed \$216 million in cash.
- Lawyers said 23andMe consumers were likely to get a 'steep discount' in monetary relief, with injunctive relief possible, such as dark web monitoring.
- 23andMe attorney Ian Ballon said his client was looking for a global settlement that would encompass the multidistrict litigation, plus state court cases and thousands of arbitration demands.

A federal judge in California heard arguments from more than a dozen plaintiffs' lawyers on whether the data breach lawsuits against 23andMe Inc. should head straight to settlement given its precarious financial condition.

23andMe, the South San Francisco-based genetic testing company, faces dozens of class actions brought on behalf of nearly seven million consumers whose personal information, including highly sensitive genetic profiles, was hacked last year.

At a Monday hearing in San Francisco, U.S. District Judge Edward Chen said he was inclined to pause on formal discovery after many plaintiffs' lawyers, some of whom already have participated in two mediation sessions, and said 23andMe was headed toward bankruptcy.

“They have \$216 million in cash, an annual burn rate of \$170 million,” Michael Reese, of New York’s Reese LLP, said, citing 23andMe’s annual report last month to the U.S. Securities and Exchange Commission. That’s significant, he said, because many class members would be allowed statutory damages under the Illinois Genetic Information Privacy Act, which could exceed \$3 billion.

“This is not only bet-the-company litigation, but it means that without focusing on immediate relief for the class it’s very likely the class will receive no relief,” he said.

The remarks come as plaintiffs’ lawyers are vying over who should lead the 23andMe data breach multidistrict litigation. Other lawyers mirrored concerns that 23andMe was in imminent danger of bankruptcy and, because of that, consumers were likely to get a “steep discount” in monetary relief.

But they also insisted that injunctive relief, particularly for those who were targeted because they were of Ashkenazi Jewish or Chinese descent, was the main focus of the litigation. In particular, they suggested dark web monitoring and a fund to compensate class members for psychological or physical harm.

Ross Good, of Chicago’s Loftus Eisenberg, suggested third-party monitoring of 23andMe that would allow class members to delete their genetic information, including those who do not know they are affected. He noted that he was an Ashkenazi Jewish member of 23andMe and received an email from defense counsel telling him he wasn’t impacted.

“I don’t think we know how many putative class members were impacted by this case,” he said.

Chen, who was the first Asian American man appointed to the U.S. District Court for the Northern District of California, asked several lawyers about having subclasses of class members who were Ashkenazi Jewish or Chinese.

‘Incurring Significant Fees in Arbitration’

But 23andMe attorney Ian Ballon, a shareholder at Am Law 100 firm Greenberg Traurig in East Palo Alto, California, downplayed the unique nature of the case.

“We don’t think this is a unique data breach, and we also don’t think there’s a significant or even a realistic risk of physical or psychological harm,” he told Chen. “What we are talking about is the disclosure of certain ancestry, for example that someone is Jewish or Ashkenazi Jew, or of Chinese origin, in conjunction with their display name, not necessarily their real name.”

He said his client was looking for a global settlement that would encompass the multidistrict litigation, plus state court cases and thousands of arbitration demands.

“We will start incurring significant fees in arbitration,” he said. “That would depreciate what is available in terms of legal fees.”

23andMe participated in early mediation on Jan. 31 with most of the lawyers. Six lawyers were involved in a second mediation on March 20.

On Sunday, Chen issued an order asking lawyers to address several issues, such as what makes the case unique from other data breach litigation, the risks of physical or psychological harm to class members, 23andMe’s financial situation and the size of the leadership team.

“Today’s hearing is a very important one since we need to figure what the leadership structure is going to be in this case and how we’re going to move forward,” Chen said at the start of the hearing.

Most lawyers argued that the team should be fairly small—two or three law firms.

Many of the lawyers, in court filings, supported the mediator who oversaw the two previous discussions, Randall Wulff, as special settlement master, which Chen plans to appoint. And some encouraged Chen to halt the litigation for 45 days to give time to reach a settlement.

“We have a defendant that I think objectively based on public information is financially distressed,” said Norman Siegel, of Stueve Siegel Hanson in Kansas City, Missouri. “We have a very severe data breach involving harms that are unique in the data breach context. And that really, in my view, informs a path that settlement should be fully explored.”

But others insisted more discovery needed to happen alongside settlement discussions.

“We don’t stop litigating just because the defendant is having financial trouble,” said Sharon Zinns, of Atlanta’s Zinns Law. “This is not your traditional case, and it’s going to set the stage for other cases like this.”

NOT FOR REPRINT

Copyright © 2024 ALM Global, LLC. All Rights Reserved.