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Verogen, Inc. and Qiagen North American Holdings, Inc.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ANGELA HUTCHESON; SARA LAFLER; ALUCARD TAYLOR; KAMA DELK; ERIN RADCLIFFE; MIKHAILA DIEKMANN; CHELSEA GARDNER; ANDREW STARIN; SHARYL YEISLEY; and ERICA NATHAN, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

VEROGEN, INC. D/B/A GEDMATCH; and QIAGEN NORTH AMERICAN HOLDINGS, INC.,

Defendants.

Case No. 3:24 CV 1977 JES MMP

DEFENDANTS VEROGEN, INC. AND QIAGEN NORTH AMERICAN HOLDINGS, INC.'S NOTICE OF MOTION AND MOTION TO DISMISS PLAINTIFFS' AMENDED CLASS ACTION COMPLAINT PURSUANT TO FED. R. CIV. P. 12(B)(1) AND 12(B)(6)

NO ORAL ARGUMENT REQUESTED

Judge: Hon. James E. Simmons, Jr
Date: August 20, 2025
Time: 9:00 a.m.
Ctrm: 4B (4th Flr)

Date Action Filed: October 24, 2024

TO THE HONORABLE COURT, PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 20, 2025 at 9:00 a.m., or as soon thereafter as counsel may be heard, in Courtroom 4B of the above-entitled court located at United States Courthouse, 221 West Broadway, San Diego, CA 92101, Defendants Verogen, Inc. and Qiagen North American Holdings, Inc. (hereinafter "Defendants"), by and through their undersigned counsel, will and hereby do move pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) to dismiss the Amended Class Action Complaint of Plaintiffs (Dkt. # 4) filed against them. Defendants file herewith their Memorandum of Points and Authorities in Support of their Motion to Dismiss setting forth the grounds on which they make this Motion.

This Motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, and all pleadings and papers on file in this matter, and such other matters as may be presented to this Court at the hearing or otherwise.

This Motion is made following the conference of counsel which took place on July 7, 2025.

DATED: July 14, 2025

SEYFARTH SHAW LLP

BY: */S/ AARON BELZER* *
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Defendants.

Case No. 3:24 CV 1977 JES MMP

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS VEROGEN, INC. AND QIAGEN NORTH AMERICAN HOLDINGS, INC.'S MOTION TO DISMISS PLAINTIFFS' AMENDED CLASS ACTION COMPLAINT PURSUANT TO FED. R. CIV. P. 12(B)(1) AND 12(B)(6)

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Defendants Verogen, Inc. (hereinafter "Verogen") and Qiagen North American Holdings, Inc. (hereinafter "QIAGEN" and, together with Verogen, "Defendants"), by and through their undersigned counsel, hereby submit this Memorandum of Points and Authorities in support of their Motion to Dismiss Plaintiffs' Amended Class Action Complaint ("Amended Complaint") (Dkt. 4) pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6):

I. INTRODUCTION

In their Amended Complaint, Plaintiffs assert nine causes of action under five different state privacy statutes and seek to represent ten different classes/subclasses. The various privacy violations Plaintiffs allege arise from three distinct scenarios under which Defendants allegedly shared genetic information with various third parties without consent. All three scenarios stretch the boundaries of the statutes well beyond their original intent and require the Court to make broad assumptions and implausible factual leaps to find viable claims. Moreover, for each of Plaintiffs' claims, even the most generous reading of the allegations negates it and outright dismissal with prejudice is warranted.

First, Plaintiffs assert what are referred to herein as the "Sale" claims. Verogen owns and operates the website GEDmatch.com, which is a free online platform that allows individuals to upload previously obtained DNA data test results (or "DNA kits") from various commercial testing companies, such as AncestryDNA, 23andMe, and FamilyTreeDNA, to its "GEDmatch database" to compare and analyze genetic information for purposes of conducting genealogical research. In January 2023, QIAGEN acquired Verogen and thereby became its corporate parent. Plaintiffs allege that this change in ownership necessarily resulted in a transfer by Verogen to QIAGEN of their "genetic information" stored in the GEDmatch database and that by acquiring Verogen, QIAGEN "compelled the disclosure" of this genetic information. However, Plaintiffs fail to plead facts that plausibly allege the acquisition alone is violative of the privacy statutes in question. Indeed, at all times following the acquisition, Verogen has operated and continues to operate as a separate entity under the QIAGEN umbrella and continues to operate the

GEDmatch.com website exactly as it had pre-acquisition. QIAGEN, as Verogen's corporate parent, has no access to the GEDmatch database. Further, Plaintiffs expressly consented to the use of their data in this way: when they agreed to the GEDmatch Terms of Use, they consented to the provision of access to their data to "individuals and entities" that GEDmatch might "merge with" in the future.

Second, six Plaintiffs allege that Verogen's use of the Meta pixel on GEDmatch.com somehow constitutes a disclosure of their genetic information to Meta (the "Meta" claims). Plaintiffs make this allegation despite lacking any factual basis to conclude that genetic information was disclosed through the use of that website analytics tool—indeed it was not. But more critically, as Plaintiffs allege, the Meta pixel was not installed on GEDmatch.com until *after* Plaintiffs created their GEDmatch accounts and uploaded their DNA kits and so the pixel could not have resulted in the transfer of any relevant information to Meta.

Third, certain Plaintiffs assert claims based on the existence of a technical "loophole" in the GEDmatch database that purportedly caused certain law enforcement agencies to gain unauthorized access to a limited group of *unknown* users' profiles (the "Law Enforcement" claims). Plaintiffs maintain that the existence of this loophole equates to "disclosure" of Plaintiffs' genetic information on the part of Verogen. However, Plaintiffs do not and cannot allege that any of their (nor any other specific person's) data was ever actually accessed through this "loophole" by any unauthorized party.

Accordingly, several independent grounds exist requiring dismissal of Plaintiffs' claims, including that Plaintiffs lack Article III standing because they have suffered no injury in fact and because, beyond mere speculation and fabricated conclusions, Plaintiffs wholly fail to allege facts sufficient to state claims against either Verogen or QIAGEN.

II. PLAINTIFFS' AMENDED COMPLAINT

Plaintiffs filed this putative class action lawsuit against Defendants asserting causes of action under various state genetic privacy statutes, including those of Alaska, Illinois, New Hampshire, New Mexico, and Oregon. Each Plaintiff alleges that he or she created a GEDmatch account and uploaded his or her "DNA file" to the GEDmatch website at some

point in the past and that his or her data has remained in the GEDmatch database at all relevant times. (Dkt. 4, ¶¶ 32-71.) Plaintiffs Hutcheson, Lefler, Gardner, Starin, Taylor, and Delk allege that they were Facebook users at the time they created their GEDmatch accounts. (Dkt. 4, ¶¶ 32, 37, 41, 46.) Each Plaintiff also alleges that he or she "has never provided informed, written consent to Verogen to disclose her genetic information or the fact [he or] she had undergone genetic testing to Qiagen . . ." (*id.*), but the Amended Complaint also incorporates by reference the GEDmatch Terms of Service—to which each Plaintiff agreed as a condition of establishing his or her account—by which Plaintiffs consented to the provision of their data to any entity that GEDmatch might merge with in the future. (Dkt. 4, ¶ 116, n. 22; Terms of Service and Privacy Policy, revised May 18, 2019[1] attached hereto as Exhibit 1.)

With respect to Verogen, Plaintiffs allege that in January 2023, as part of its acquisition by QIAGEN, Verogen disclosed the genetic information of all its GEDmatch users, including Plaintiffs, to QIAGEN without their consent. (Dkt. 4, ¶¶ 87-95.) The Illinois, New Hampshire, and Oregon Plaintiffs allege that the use of the Meta pixel on GEDmatch.com between January 2020 and June 2023 resulted in the improper disclosure of users' identities and the "fact they had undergone genetic testing" to Meta, although none of them alleges that Verogen ever disclosed the results of any DNA test or the underlying genetic data itself. (*Id.*, ¶¶ 96-111.) And one Illinois Plaintiff and one Oregon Plaintiff also allege that, although they opted not to allow law enforcement agencies to compare evidentiary DNA files to their genetic profiles for certain purposes, there existed a "loophole" in the GEDmatch PRO platform between 2019 and 2023 that allowed law enforcement agencies to compare DNA kits of GEDmatch users who opted-out to criminal profiles for suspects of violent crimes, as that term is specifically defined. (*Id.*, ¶¶ 112-121.)

With respect to QIAGEN, certain Plaintiffs assert claims against QIAGEN for "compell[ing] disclosure of [their] genetic information" by requiring access to Verogen's

[1] Available at https://web.archive.org/web/20190627225855/https://www.gedmatch.com/tos.htm

GEDmatch database as part of the acquisition of Verogen and for retaining and using Plaintiffs' genetic information for profit. (*Id.*, ¶¶ 122-129.)

For ease of reference, and given the number of different claims by different Plaintiffs under the five different state statutes, Defendants provide the below chart depicting which Plaintiffs are asserting which claims:

	Sale Claim (Verogen)	Sale Claim (QIAGEN)	Meta Claim	Law Enforcement Claim
Hutcheson (IL)	X	X	X	X
Lafler (IL)	X	X	X	
Delk (OR)	X	X	X	
Taylor (OR)	X	X	X	X
Yeisley (AK)	X	X		
Nathan (AK)	X	X		
Gardner (NH)	X		X	
Starin (NH)	X		X	
Radcliffe (NM)	X	X		
Deikmann (NM)	X	X		

III. PLAINTIFFS' AMENDED COMPLAINT SHOULD BE DISMISSED FOR LACK OF SUBJECT MATTER JURISDICTION BECAUSE PLAINTIFFS HAVE NOT SUFFERED AN ARTICLE III INJURY IN FACT.

A. Standard on a Motion to Dismiss Pursuant to Rule 12(b)(1) and Constitutional Requirements

A complaint may be dismissed under Rule 12(b)(1) if the plaintiff lacks standing to bring suit. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). A plaintiff, as "the party seeking to involve the jurisdiction of the federal court[,] has the burden of establishing that jurisdiction exists." *Scott v. Breeland*, 792 F.2d 925, 927 (9th Cir. 1986). The standing doctrine is derived from Article III's limitation on the power of federal courts to hear only actual cases or controversies. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 337 (2016). Standing consists of three elements: (1) injury in fact; (2) that is fairly traceable to the

challenged conduct of the defendant; and (3) that is likely to be redressed by a favorable judicial decision. *Id*. at 338. To establish injury in fact, "a plaintiff must show that he or she suffered an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical." *Id*. "No concrete harm, no standing." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 417 (2021).

While an intangible harm, such as "disclosure of private information," can constitute a concrete injury under Article III, Congress may not, by enacting a statutory prohibition "simply enact an injury into existence, using its lawmaking power to transform something that is not remotely harmful into something that is." *Id*. at 426. "[A]n injury in law is not an injury in fact": that is, "only those plaintiffs who have been concretely harmed by a defendant's statutory violation may sue that private defendant over that violation in federal court." *Id*. at 427. The U.S. Supreme Court "has rejected the proposition that a plaintiff automatically satisfies the injury-in-fact requirement whenever a statute grants a person a statutory right and purports to authorize that person to sue to vindicate that right." *Id*.

When a 12(b)(1) motion involves a factual attack on subject matter jurisdiction, "the district court may review evidence beyond the complaint without converting the motion to dismiss into a motion for summary judgment. . . . The court need not presume the truthfulness of the plaintiff's allegations [and] the party opposing the motion must furnish affidavits or other evidence necessary to satisfy its burden of establishing subject matter jurisdiction." *Safe Air for Everyone*, 373 F.3d at 1039 (cleaned up).

B. Plaintiffs Have Not Suffered a Concrete Harm.

In the present case, even if Plaintiffs could allege facts that would plausibly give rise to a claim under any of the state genetic privacy laws in question, they cannot pursue their claims in this Court because they have not suffered any concrete harm as a result of any alleged statutory violation.

1. Plaintiffs Lack Standing to Pursue their Meta Claims (Illinois, New Hampshire, and Oregon Meta Claims).

With respect to the Meta claims asserted by the Illinois, New Hampshire, and Oregon

Plaintiffs, each of them uploaded their respective DNA kits to GEDmatch.com ***before*** the Meta pixel existed on the website and, therefore, no information regarding "the fact that [they] had undergone genetic testing" could have been transferred to Meta via the Meta pixel. Accordingly, none of these named Plaintiffs suffered the injury alleged through the Meta claim in the Amended Complaint.

Plaintiffs allege that the Meta pixel was installed on the GEDmatch website "at least as early as January 2020" (dkt. 4, ¶ 103) and, in fact, the Meta pixel was first implemented on GEDmatch.com on January 27, 2020. (*See* Declaration of T. Osypian ("Osypian Decl.") ¶ 2.) After that time, the Meta pixel was configured to capture website users' pageviews and, at certain times, was configured to capture specific events, such as when a user uploaded a DNA kit. (*Id*., ¶ 2.) The Meta pixel was configured this way to keep count of the number of users who uploaded their DNA kits to the website and, when a DNA kit was uploaded, the pixel transmitted certain information to Meta about each such "event." (*Id*.) Plaintiffs' Meta claims here are premised entirely on the allegation that the Meta pixel on GEDmatch.com "disclose[d] to Meta . . . that the user had uploaded her DNA file to GEDmatch.com," which (according to Plaintiffs) revealed "the fact that [they] had undergone genetic testing." (Dkt. 4, ¶ 103.) Therefore, according to their own allegations, the fact that Plaintiffs had undergone genetic testing in the past was disclosed to Meta by the fact (and at the time) that they uploaded their DNA kits.

But, critically, each of the named Plaintiffs asserting a Meta claim admits to uploading his or her DNA kit to GEDmatch.com *prior to* the time the Meta pixel was installed: Hutcheson uploaded her DNA kit in 2018 (dkt. 4, ¶ 33); Lafler uploaded her DNA kit in 2016 (*id*., ¶ 38); Taylor uploaded his DNA kit in 2019 (*id*., ¶ 42); Delk uploaded her DNA kit in 2018 (*id*., ¶ 47); Gardner uploaded her DNA kit in 2019 (*id*., ¶ 59); and Starin uploaded his DNA kits in 2016 and 2017 (*id*., ¶ 62.) Because the Meta pixel was not present on the website at the time that the named Plaintiffs uploaded the results of their prior genetic tests, Meta would not have received any information regarding the fact that they uploaded test results at all and Plaintiffs, therefore, could not have suffered an injury.

2. Plaintiffs Lack Standing to Pursue their Law Enforcement Claims (Illinois Non-Consent to Law Enforcement Subclass and Oregon Non-Consent to Law Enforcement Subclass).

With respect to the Law Enforcement claim, the named Plaintiffs asserting that claim (Hutcheson and Taylor) lack standing because they have not and cannot allege that they suffered any injury at all: neither one of them alleges that his or her "genetic information" was ever in fact shared with or accessed improperly by law enforcement.

First, Plaintiffs' Law Enforcement claim is premised on the existence of an alleged technical "loophole" that law enforcement agencies (or those acting on their behalf) could have used to improperly access certain users' profiles. However, Plaintiffs do not, and cannot, establish that their specific "genetic information" was accessed or viewed by law enforcement personnel through use of the alleged loophole. Rather, Plaintiffs merely allege that because this loophole existed, it is possible that their information was viewed by law enforcement personnel without their consent, which is too speculative to constitute an actual harm. In fact, given the circumstances surrounding how this loophole worked, it is extremely unlikely that either Hutcheson's or Taylor's profile was accessed.

GEDmatch offers a dedicated platform, known as GEDmatch PRO, designed to support law enforcement and forensic teams in their investigations. (Osypian Decl. ¶ 11.) GEDmatch PRO allows its users to upload certain criminal profiles and run comparisons against the GEDmatch database to attempt to genetically match the criminal profile with other user profiles. (*Id*., ¶¶ 6-11.) GEDmatch users have certain user options as it relates to these criminal searches: a user can opt-in which, among other things, allows GEDmatch PRO users to compare any criminal profile against his or her DNA profile; or a user can opt-out, which should prevent GEDmatch PRO users from comparing criminal profiles to a user's DNA profile for purposes of identifying perpetrators of violent crimes. (*Id*., ¶¶ 6-10.)

In 2023, Verogen discovered through a discussion on a Facebook thread that certain GEDmatch PRO users may have been using a loophole in the GEDmatch and GEDmatch PRO portals that allowed them, against the GEDmatch Terms of Use, to manually

circumvent a user's opt-out preference by, following the upload and original search of the criminal profile, entering a non-criminal kit number in the primary position and re-running the search. (Osypian Decl. ¶ 12.) This manual manipulation of kit numbers could then result in the criminal profile being compared to certain users who had opted out. (*Id*.) Therefore, while it is possible that GEDmatch PRO users taking advantage of this loophole might have run a search that pulled up Plaintiffs' profiles—which would occur only in the event a Plaintiff was a genetic match to a kit number manually entered—there is no way to know which users' profiles were accessed in this way because Defendants do not have any record of the searches run by law enforcement agencies or the results from those searches. (*Id*., ¶ 15.) In other words, this is not a situation in which, as in a data breach, all users' data was exposed and the question of standing centers on whether that data was ever used in a way that harmed the user: here, the relevant question is whether Plaintiffs' data was even exposed at all. Plaintiffs can only speculate whether their DNA kits were among those improperly accessed, which is wholly insufficient for Article III standing.

3. Plaintiffs Lack Standing to Pursue their Sale Claims against Verogen and QIAGEN.

Finally, none of the Plaintiffs suffered any concrete harm as it relates to the sale of Verogen to QIAGEN. While corporate ownership of Verogen changed following the acquisition, the GEDmatch database continues to be owned and operated by Verogen. (Osypian Decl. ¶¶ 4-5.) QIAGEN never had access to the GEDmatch database and nothing about the way the Plaintiffs' data is kept, stored, accessed, or used has changed. (*Id*.) Therefore, Plaintiffs have suffered no actual injury as a result of QIAGEN's acquisition of Verogen. Further, contrary to their conclusory allegations, Plaintiffs expressly consented to the disclosure of their data in connection with a possible sale of Verogen when they registered for an account. (Exhibit 1; Osypian Decl. ¶ 1.) Certainly, Plaintiffs cannot have been harmed by something they consented to.

In January 2023, QIAGEN acquired Verogen. (Osypian Decl. ¶ 4.) QIAGEN did not obtain access to the GEDmatch database following its acquisition of Verogen. (*Id*.) Rather,

Verogen remained a separate legal entity and only Verogen legacy employees continued to have access to the GEDmatch database. (*Id*.) QIAGEN restricted, and continues to restrict, access to the GEDmatch database to only those individuals formerly employed by Verogen and any individuals subsequently hired to work exclusively on GEDmatch services. (*Id*.) That is, no one at QIAGEN that does not work exclusively with GEDmatch has access to the GEDmatch database. (*Id*.) Therefore, while ownership of Verogen changed hands as a result of the acquisition, access to the GEDmatch database did not and Plaintiffs cannot allege they suffered any concrete harm from this sale.

In *Transunion*, plaintiffs seeking to represent a putative class brought suit against Transunion LLC for, among other things, sending them mailings that were not formatted correctly under the "disclosure" and "summary of rights" requirements of the Fair Credit Reporting Act (FCRA). 594 U.S. at 439-440. Although Transunion had technically violated the FCRA by formatting the mailings incorrectly, the court held that these constituted "bare procedural violation[s], divorced from any concrete harm" because the class members had "not demonstrate[d] that they suffered any harm at all from the formatting violations." *Id*. at 440. Many other courts have held that a violation of the FCRA's "stand-alone disclosure" requirement, while technically a violation of the law, does not constitute a concrete harm sufficient to confer Article III standing when the plaintiff otherwise actually consented to have his or her credit report accessed. *See, e.g.*, *Larroque v. First Advantage LNS Screening Sols., Inc.*, 2016 WL 4577257, at *5 (N.D. Cal. Sept. 2, 2016) (no standing where the plaintiff "allege[d] only that Defendant did not comply with the procedural requirements of Section 1681b(b)(1)."); *Nokchan v. Lyft, Inc.*, 2016 WL 5815287, at *4-5 (N.D. Ca. Oct. 5, 2016) (similarly holding that the plaintiff was not injured by a technical violation of the "stand-alone disclosure" requirement). And federal district courts in this state have dismissed claims based on alleged violations of the California Invasion of Privacy Act (CIPA) where, even though the plaintiff had alleged a technical violation of the statute, the plaintiff could not show that he or she suffered any concrete privacy injury. *See, e.g., Mikulsky v. Noom, Inc.*, 682 F. Supp. 3d 855 (S.D. Cal.

2023) (plaintiff had not suffered a concrete harm to her privacy and so could not pursue a CIPA claim based on a bare violation of the statute); *Lightoller v. Jetblue Airways Corporation*, 2023 WL 3963823 (S.D. Cal. June 12, 2023) (same); *Rodriguez v. Autotrader.com, Inc.*, 2025 WL 1122387 (C.D. Cal. March 14, 2025) (same).

Similarly here, Plaintiffs have not, and cannot, allege they have been harmed by the sale because their information has not been disclosed to any entity that did not already have access to their information. (Osypian Decl. ¶¶ 4-5.) Nor can Plaintiffs allege that their data is being accessed or used in ways that they did not agree to when they voluntarily provided it to Verogen. (*Id*.) Plaintiffs, therefore, lack standing under Article III to pursue their claims against Verogen and QIAGEN arising out of the alleged "disclosure" of information from Verogen to QIAGEN incident to the January 2023 acquisition.

IV. PLAINTIFFS HAVE FAILED TO STATE PLAUSIBLE CLAIMS ON WHICH RELIEF CAN BE GRANTED.

Further, each of Plaintiffs' claims is subject to dismissal because Plaintiffs have failed to state a claim on which relief can be granted.

A. Standard for a Motion to Dismiss Pursuant to Rule 12(b)(6)

Dismissal under Federal Rule 12(b)(6) is appropriate either where the plaintiff's complaint lacks a cognizable legal theory or if it fails to plead sufficient facts to support a cognizable legal theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988). Notably, "plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (cleaned up). "Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citations omitted). In other words, while a court must accept as true all factual allegations in the complaint, this principle does not apply to legal conclusions couched as factual allegations. *Twombly*, 550 U.S. at 555. And "where the plaintiff's inferences would contradict the well-pleaded factual

allegations, the Court cannot accept them." *Johnson v. Shasta Corp.*, 2022 WL 789018, at *3 (N.D. Cal. Feb. 24, 2022), *report and recommendation adopted*, 2022 WL 783969 (N.D. Cal. Mar. 14, 2022).

Further, in evaluating a Rule 12(b)(6) motion, the Court may consider, in addition to the allegations of the complaint, "documents whose contents are alleged in a complaint and whose authenticity no party questions." *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir.), *opinion amended on denial of reh'g*, 275 F.3d 1187 (9th Cir. 2001) (internal citations omitted). "In order to prevent plaintiffs from surviving a Rule 12(b)(6) motion by deliberately omitting . . . documents upon which their claims are based, a court may [also] consider a writing referenced in a complaint but not explicitly incorporated therein if the complaint relies on the document and its authenticity is unquestioned." *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007) (cleaned up, internal citations omitted).

B. Plaintiffs Fail to State Viable Meta Claims under Illinois, New Hampshire, and Oregon Law.

Beyond Plaintiffs' lack of Article III standing, Plaintiffs' Meta claims under Illinois, New Hampshire, or Oregon law are fatally deficient for several reasons and such deficiencies cannot be cured.

1. Plaintiffs Uploaded their DNA Kits Prior to Installation of the Meta Pixel.

Plaintiffs interpret each of Illinois's, Oregon's, and New Hampshire's genetic privacy statutes as prohibiting disclosure of the mere fact that a person underwent genetic testing at some point in the past.[2] That is, there is no allegation that Verogen shared with Meta any actual genetic information; rather, Plaintiffs' claims are premised entirely on the allegation that Verogen disclosed to Meta (through information transmitted by the Meta pixel) that Plaintiffs simply "took a genetic test."

As discussed above in the context of Plaintiffs' lack of standing, and as admitted by

[2] As discussed in Section IV.B.3 below, neither the Illinois nor Oregon statute can reasonably be interpreted to protect the mere fact that a person has undergone genetic testing as "genetic information."

Plaintiffs, the only way for the Meta pixel to transmit information about the existence of a genetic test would be if the Meta pixel were triggered at the time an individual uploaded a DNA kit. Plaintiffs allege that "Verogen used the Meta Pixel technology it had installed on the website to disclose to Meta . . . that the user had uploaded her DNA file to GEDmatch.com." (Dkt. 4, ¶ 103.) However, those Plaintiffs asserting Meta claims all allege that they uploaded their DNA kits to GEDmatch.com ***before*** the time the Meta pixel was installed on the website in January 2020. (Dkt. 4, ¶¶ 33, 38, 42, 47, 59, 62, 101.) Therefore, the Meta pixel was indisputably not in use on GEDmatch.com at the time that each of these named Plaintiffs uploaded his or her DNA kit, and Plaintiffs have not alleged any other way in which Meta could otherwise have obtained information regarding the fact that Plaintiffs took genetic tests. Plaintiffs' Meta claims are deficient in a way that cannot be cured and should be dismissed.

2. Plaintiffs Have Not Alleged Facts Sufficient to Plausibly Suggest that Verogen Disclosed their Identities.

Plaintiffs' Meta claims must be dismissed for the additional reason that they have not sufficiently plead that Verogen disclosed their identities to Meta. Each of Illinois's, Oregon's, and New Hampshire's genetic privacy statutes requires that, in order for there to be a violation of the statute, a plaintiff must show that his or her identity was disclosed, along with the allegedly protected information in question. *See* 410 ILCS 513/30; ORS 192.539(1); N.H. Rev. Stat. Ann. § 141-H:2. Because it is undisputed that the Meta pixel does not transmit names, email address, or other specifically identifying information, Plaintiffs rely on the separate transmission of a Facebook-placed cookie to allege that Facebook receives the "identity" of a GEDmatch user because the cookie code includes a Facebook ID number ("FID").[3] (Dkt. 4, ¶¶ 100, 103-104, 107.) Plaintiffs here, however,

[3] The FID is a contained in a cookie that will be placed on a user's browser under limited, particular circumstances, such as when a user is logged into Facebook on the same browser at the same time they are accessing a website that has the Meta pixel. As Plaintiffs allege, in these instances, the transmission of information via the Meta pixel will then be "accompanied by the FID of the website visitor." (Dkt. 4, ¶ 100). The FID may then be associated with a particular Facebook account. (*Id.*)

have failed to sufficiently allege that the transmission of their FIDs to Meta constitutes the disclosure of their respective "identities," or that their FIDs are even *capable of* identifying Plaintiffs.

In the context of the federal Video Privacy Protection Act ("VPPA")—which prohibits the disclosure of "personally identifiable information" concerning consumers by videotape service providers—the Ninth Circuit Court of Appeals has adopted what has come to be known as the "ordinary person" standard of identifiability, under which information is deemed identifiable (i.e., capable of identifying a person) if it would "readily permit an ordinary person"—as opposed to a sophisticated data aggregator—to identify a specific individual. *Eichenberger v. ESPN, Inc.*, 876 F.3d 979, 985 (9th Cir. 2017). One's FID, alone, does not meet this standard, nor does it satisfy the more specific definition of "identity" as used in the statutes in question.

Plaintiffs, without any factual support, allege that Verogen disclosed their FIDs and that, generally, an FID is a "unique and persistent identifier that allows anyone to look up the user's unique Meta profile and thus identify the user by name." (Dkt. 4, ¶ 100.) However, Plaintiffs fail to allege any facts regarding their own Meta profiles that would tend to support their conclusory statement that one could identify them by name by looking at those profiles. Plaintiffs have failed to allege, for instance, that their own Meta profiles contain their real names or other information from which an ordinary person might identify them, or that an ordinary person would even have access to their Meta profiles (*i.e.*, if their profiles are private versus publicly accessible). If their profiles do not include any such identifying information or are not publicly accessible, then their FIDs alone could not identify them to an ordinary person.

Several federal district courts in this state have agreed with this interpretation. For instance, in *Heerde v. Learfield Commc'ns, LLC*, 741 F. Supp. 3d 849 (C.D. Cal. 2024), the court held that the plaintiffs' allegations regarding the transfer of their FIDs were insufficient to state a claim that the defendant had disclosed personally identifiable information because plaintiffs failed to alleged any facts about what was on their profiles.

The court held "that a person's FID can be used to identify that person *if the person's Facebook profile is publicly accessible and includes sufficient identifying information*." *Id*. at 857-58 (emphasis added). But in that case, the plaintiffs failed "to allege their PII was disclosed because they [did] not identify what information on their Facebook pages, if any, was viewable and could be used to identify them." *Id*.; *see also Ghanaat v. Numerade Labs, Inc.*, 689 F. Supp. 3d 714, 720 (N.D. Cal. 2023) ("[P]laintiffs' allegations are inadequate because they do not allege their Facebook pages contain any personal information, such as their names or email addresses."); *Smith v. Trinity Broad. of Texas, Inc.*, 2024 WL 4394557, *3 (C.D. Cal. Sept. 27, 2024) ("To claim that her FID permits Meta to identify [her, Plaintiff] must establish that (1) her Facebook profile is publicly accessible and (2) includes sufficient identifying information."); *accord Solomon v. Flipps Media, Inc.*, 2023 WL 6390055, at *3 (E.D.N.Y. Sept. 30, 2023), *aff'd*, 136 F.4th 41 (2d Cir. 2025) ("Plaintiff needed to allege that her public Facebook profile page contained identifying information about her in order to state a plausible claim."); *Wilson v. Triller, Inc.*, 2022 WL 1138073 (S.D.N.Y. April 18, 2022) (dismissing the Plaintiff's VPPA claim in part because the details from the users' Triller profile did not constitute PII where the complaint "contain[ed] no allegation as to what information was actually included on [the plaintiff]'s profile").

Moreover, whereas the VPPA prohibits the disclosure of "personally *identifiable* information," under Plaintiffs' reading of the statutes here, they would have to establish that Verogen disclosed their "*identities*." *See* 410 ILCS 513/30; ORS 192.539(1). *Identifiable* means "'capable of' identifying a person, as well as information that, standing alone, identifies a person." *Eichenberger*, 876 F.3d at 984. The definition of "identity," however, is much narrower: it means: "a person's name and other facts about who they are." Cambridge Dictionary[4]; *see also Zellmer v. Meta Platforms, Inc.*, 104 F.4th 1117, 1123, n. 1 (9th Cir. 2024) (defining "identify" as meaning "'to ascertain the identity of [something or someone]'" in holding that Illinois's Biometric Information Privacy Act applied only to biometric information that actually identifies a person). While one's FID

[4] https://dictionary.cambridge.org/us/dictionary/english/identity.

may be *capable of* identifying a person if that person's Facebook profile contains his or her name or other identifying information—and therefore might meet the definition of "personally identifiable" under the VPPA—an FID does not, standing alone, *identify* a person as would be required under Plaintiffs' interpretation of the privacy statutes at issue here. *See Eichenberger*, 876 F.3d at 984.

Because the Plaintiffs have not alleged facts sufficient to plausibly establish that Verogen disclosed their "identities" to Meta, this is another independent reason to find they failed to state a plausible claim arising from the alleged use of the Meta pixel on the GEDmatch.com website.

3. The Illinois and Oregon Statutes Do Not Protect the Mere Fact that a Person has Taken a Genetic Test in the Past as "Genetic Information."

Finally, the Illinois and Oregon Plaintiffs' Meta claims fail for the additional reason that neither the Illinois nor the Oregon statute prohibits disclosure of "the fact they had undergone genetic testing." In connection with their Meta claims, Plaintiffs do not, and cannot, allege that Verogen disclosed the results of their DNA tests or any other specific genetic information to Meta; rather, Plaintiffs allege only that Verogen disclosed "the fact they had undergone genetic testing" at some point in the past by some other provider of genetic testing. (Dkt. 4, ¶¶ 96, 103-111.) Even if these allegations are taken as true, Plaintiffs have failed to state a claim because the disclosure of such information violates neither the Illinois nor the Oregon statute.

The Illinois Genetic Information Privacy Act declares that "genetic testing and information derived from genetic testing is confidential and privileged and may be released only to the individual tested and to persons specifically authorized. . .." 410 ILCS 513/15. Then, under a section entitled "[d]isclosure of person tested and test results," it provides that "[n]o person may disclose or be compelled to disclose the identity of any person upon whom a genetic test is performed or the results of a genetic test in a manner that permits identification of the subject of the test." 410 ILCS 513/30(a). While Plaintiffs interpret this provision as prohibiting disclosure of either the identity of the person tested *or* the test

results in a manner that permits identification, when read as a whole, it is clear the statute is meant to prevent the disclosure of the identity of the person tested, along with the test results, such that the test results can be linked to a specific person. First, the section at issue is titled "[d]isclosure of person tested **and** test results," not disclosure of person tested **or** test results. Further, the remainder of section 30(a) makes clear that the statute's concern is with the disclosure of the results of genetic testing in a way that can identify the person tested, whether that be by "disclos[ure] of the identity of any person upon whom a genetic test is performed" or the disclosure of test results that is otherwise "in a manner that permits identification of the subject of the test." 410 ILCS 513/30(a).

This reading further makes sense in the context of the statute as a whole, which permits the disclosure of "de-identified information" without consent. *See* 410 ILCS 513/31.7. Therefore, it is necessary to distinguish the disclosure of genetic testing results in a way that identifies the person tested from the disclosure of de-identified information (the latter of which is permitted under the statute whereas the former is not). And the legislative history of the statute makes clear that its intent was to "protect against discrimination of individuals from illegal disclosure and use of genetic information" and "to protect an individual from their genetic information being used against them in employment and insurance coverage issues." Illinois House Transcript, 2008 Reg. Sess. No. 276. None of these concerns are implicated by disclosure of the mere fact that a person underwent genetic testing at some point in the past by some other genetic testing provider.

Similarly, the stated purposes of the Oregon genetic privacy statute include "[t]o define the circumstances under which an individual's genetic information may be collected, retained or disclosed" and "[t]o protect against discrimination by an insurer or employer based upon an individual's genetic characteristics." ORS 192.533(2). And, like the Illinois statute, the Oregon statute forbids the "disclosure" of "the identity of an individual upon whom a genetic test has been performed or the identity of a blood relative of the individual, or to disclose genetic information about the individual or a blood relative of the individual in a manner that permits identification of the individual. . . ." (ORS 192.539(1)). But

"disclosure" is specifically defined under the Oregon statute as "to release, publish or otherwise make known to a third party *a DNA sample or genetic information*." ORS 192.531(7) (emphasis added). "DNA sample" is defined as "any human biological specimen that is obtained or retained for the purpose of extracting and analyzing DNA to perform a genetic test" and "genetic information" is defined as "information about an individual or the individual's blood relatives obtained from a genetic test" (*i.e.*, the results of the genetic test and not the mere fact that it was performed). ORS 192.531(9) & (11).

Plaintiffs do not allege that Verogen disclosed any DNA samples or the results of any genetic tests to Meta and so they have failed to state a claim under either the Illinois Genetic Information Privacy Act or the Oregon genetic privacy statute.

C. Plaintiffs Have Failed to State Viable Law Enforcement Claims under Illinois or Oregon Law.

Plaintiffs Hutcheson and Taylor also fail to plausibly state a Law Enforcement claim under Illinois or Oregon law. First, Plaintiffs have not plausibly alleged that their information was actually "disclosed" because they allege only that it is possible that their DNA kits were accessed and not that they actually were accessed in any unauthorized way. Further, the facts Plaintiffs allege do not plausibly establish that their DNA kits were accessed in a way that was unauthorized or not permitted by their express consent.

As an initial matter, Plaintiffs' allegations do not establish that the "genetic information" of any named Plaintiff was accessed or viewed by law enforcement personnel; rather, Plaintiffs allege only that it is *possible* that their information was viewed by law enforcement personnel without their consent. Specifically, Plaintiffs allege that, "from approximately 2019 (perhaps earlier) through at least July 2023, GEDmatch had a 'loophole' that allowed law enforcement or other users acting on behalf of law enforcement, to view DNA files not marked as 'opt in.' In so doing, Verogen disclosed the DNA files of an unknown number of individuals to law enforcement not only without their consent, but against their specific wishes." (Dkt. 4, ¶ 115.) In support of this allegation, Plaintiffs cite to Verogen's own press release dated November 13, 2023, in which Verogen advised that

"a small number of forensic genetic genealogy practitioners had circumvented GEDmatch settings in violation of [Verogen's] Terms of Use, enabling them to access some profiles of GEDmatch users who had not opted in to law enforcement investigations for violent crime and homicides." (Dkt. 4, ¶ 115; "Notice regarding investigations into FIGG practitioners circumventing GEDmatch settings and violating Terms of Service, and actions taken" (November 2023).)[5] Therefore, according to Plaintiffs' own allegations, a small number of GEDmatch PRO users accessed "some" user profiles without authorization but the number and identity of users affected by this loophole are "unknown." (Dkt. 4, ¶ 115.) And Plaintiffs never allege that *their* DNA kits were improperly disclosed, nor could they: they can only speculate whether their kits were among those limited kits improperly accessed. For these reasons, they have failed to state a plausible Law Enforcement claim because there can be no liability if no access ever occurred.

But even if law enforcement personnel had accessed Plaintiffs' profiles (which Plaintiff cannot say occurred), Plaintiffs also have not alleged facts sufficient to establish that such access was without their authorization. Both Plaintiffs Hutcheson and Taylor allegedly selected the "opt-out" privacy settings on their GEDmatch accounts. (Dkt. 4, ¶¶ 35, 44.) However, as Plaintiffs also allege in their Amended Complaint, when Plaintiffs selected the "opt-out" option, they expressly consented to allow their DNA profiles to be compared to kits submitted by law enforcement for certain purposes, including the identification of human remains. (Dkt. 4, ¶ 80.) Users who select the "opt-out" option are promised ***only*** that their kits will not be accessed by law enforcement to "identify perpetrators of violent crimes." (*Id.*) Therefore, Hutcheson and Taylor consented to allow law enforcement to access their profiles for certain purposes. Plaintiffs here never allege that their DNA kits were accessed by law enforcement for the forbidden purpose of identifying perpetrators of violent crime: Plaintiffs allege only that "Verogen disclosed

[5] Available at https://verogen.com/noticeregarding-investigations-into-figg-practitioners-circumventing-gedmatch-settings-and-violating-terms-of-serviceand-actionstaken/#:~:text=We%20recently%20learned%20that%20a,for%20violent%20crime%20and%20homicides.

DNA files of an unknown number of individuals to law enforcement." (Dkt. 4, ¶ 115.) Because Plaintiffs Hutcheson and Taylor do not allege that their data was accessed at all, let alone for an unauthorized purpose, they have failed to sufficiently plead that they were aggrieved by any violation of the Illinois or Oregon statute and their Law Enforcement claims must be dismissed.

D. Plaintiffs Have Failed to State a Claim Against Verogen or QIAGEN related to the Sale of Verogen to QIAGEN.

Finally, none of the Plaintiffs have pled facts sufficient to state a claim against either Verogen or QIAGEN related to the acquisition of Verogen by QIAGEN. Plaintiffs conclude that QIAGEN's acquisition of Verogen necessarily resulted in the "disclosure" of all of the data in Verogen's GEDmatch database to QIAGEN and that this "disclosure" was allegedly made without Plaintiffs' prior consent. Further, Plaintiffs claim that QIAGEN violated the laws of Alaska, Illinois, New Mexico, and Oregon by "retaining," "obtaining," "using," and "compelling the disclosure" of Plaintiffs' DNA kits as part of its acquisition of Verogen. But Plaintiffs have failed to state a viable claim; first, because they expressly consented to the disclosure of their information to any entity that GEDmatch might merge with and, second, because they have failed to allege any specific facts that would give rise to a plausible inference that the transaction in question was anything more than a run-of-the-mill acquisition or that the data would be used for some other purpose beyond what was agreed to when Plaintiffs voluntarily provided their DNA kits to Verogen.

First, while Plaintiffs allege that none of them consented to the disclosure of their information to QIAGEN, this allegation is specifically contradicted by the Terms of Use to which each Plaintiff agreed, and which are relied upon and referenced in Plaintiffs' Amended Complaint. (*See* dkt. 4, ¶ 116, n. 22.) These Terms of Use expressly provide:

> We cannot predict what the future holds for DNA or genealogy research. We cannot predict what the future will be for GEDmatch. **It is possible that, in the future, GEDmatch will merge with, or operations will be transferred to other individuals or entities. If that happens, the operating personnel at GEDmatch will change. GEDmatch reserves the right to provide access to your data (including Raw Data, Genealogy Data, profile information,**

> **and other personal information) to those other individuals or entities, which may include people not currently involved in GEDmatch operations**. This Policy will continue to apply to the Site until you receive notification of changes to the Policy. If this possibility is not acceptable to you, you agree that you will not provide your personal information, Raw Data, or Genealogy Data to GEDmatch. If you have already provided personal information, Raw Data, or Genealogy Data, you agree to remove it from GEDmatch immediately.

(Exhibit 1, *emphasis added*.) Therefore, the Terms of Use incorporated into Plaintiffs' Amended Complaint demonstrate that Plaintiffs did, indeed, expressly consent to the provision of their data to "other individuals or entities which may include people not currently involved in GEDmatch operations" if GEDmatch were to merge with those other individuals or entities.

Each of the genetic privacy laws under which Plaintiffs bring suit forbids the disclosure, retention, or use of Plaintiffs' genetic information only if that disclosure, retention, or use is accomplished without first obtaining Plaintiffs' consent. *See* A.S. § 18.13.010(a)(1); 410 ILCS 513/15(a); N.H. Rev. Stat. § 141-H:2(II); N. M. S. A. 1978, § 24-21-3(B); ORS 192.537. Here, however, Verogen obtained Plaintiffs' consent to disclose their genetic information to any individual or entity with which GEDmatch might merge in the future. Plaintiffs, therefore, have failed to state a claim as it relates to Verogen's alleged disclosures to QIAGEN as a result of their merger.

Further, Plaintiffs have failed to allege that QIAGEN actually accessed their data or that QIAGEN did anything other than acquire Verogen. While no court has yet addressed Plaintiffs' novel legal theories, the U.S. Court of Appeals for the Seventh Circuit has previously held that a transaction that involved a purchase of the stock of a genetic testing company, in and of itself, does not constitute "compelling the disclosure" of genetic information under the Illinois Genetic Information Privacy Act. In *Bridges v. Blackstone, Inc.*, 66 F.4th 687 (7th Cir. 2023), several plaintiffs brought a putative class action lawsuit against asset management firm Blackstone Inc. following its "all-stock" acquisition of the genealogical research platform and DNA testing provider Ancestry.com. *Id*. at 688. The

plaintiffs alleged that Blackstone "compelled the disclosure" of their genetic information, which they had provided to Ancestry.com, in violation of Section 30 of the Illinois Genetic Information Privacy Act. *Id.* The federal district court dismissed the complaint, and the Seventh Circuit affirmed. (*Id.* at 689-690.) The appellate court reasoned that it could not "plausibly infer that a run-of-the-mill corporate acquisition, without more alleged about the transaction, results in a compulsory disclosure within the meaning of Section 30." *Id.* at 689. The court further held that it "[did not] matter that Blackstone may have pursued the deal, at least in part to obtain Ancestry's genetic information" or that "Blackstone, as part of the firm's broader investment strategy, planned to sell data from unnamed portfolio companies to unaffiliated third parties." *Id.* at 689-90. This was because, as the court explained, the complaint "lacks a plausible allegation that Blackstone compelled Ancestry to disclose protected information." *Id.* at 690.

And, relevant to Plaintiffs' allegations that Verogen improperly disclosed genetic information by virtue of its acquisition by QIAGEN, the U.S. Bankruptcy Court for the Eastern District of Missouri recently approved the sale of the assets of Debtor 23andMe Holding Co., including its customers' genetic testing data, to a third-party over the objections of various state attorneys' general that the sale would result in the unauthorized disclosure of users' genetic information without consent under those states' privacy laws. (*See* Order Approving Debtors' Entry into the Sale Transaction Documents, *In re 23andMe Holding Co., et al.*, Case No. 25-40976-357 (E.D. Mo. Bank. Ct. June 27, 2025), attached hereto as Exhibit 2.) The court in that case expressly ruled that "[t]he change of ownership of [user's genetic testing data] included in the Acquired Assets from Debtors to Purchaser. . . does not constitute a sale, transfer, or disclosure of the [data] on a standalone basis in a manner that would violate applicable Privacy Laws" so long as the data was not disclosed to any person who did not already have access to it; so long as the purchaser complied with 23andMe's privacy policies; and so long as the purchaser obtained consent from users before using their data for any new purpose not contemplated under 23andMe's existing terms of use. (*Id.* at pp. 18-19.) Therefore, so long as no additional persons gained

access to the data in question and the data was handled consistently with 23andMe's prior practices, there was no "disclosure" such that additional consents or approvals would be required. (*Id*.) Rather, the transaction contemplated merely a "change in ownership" of the data. (*Id*. at p. 32.)

In the present case, Plaintiffs allege only that Verogen "sold its GEDmatch.com and GEDmatch PRO databases, along with the rest of the company, to Qiagen for $150 million," and that "[a]s part of the sale, Verogen gave Qiagen full access to Verogen's pioneering GEDmatch database and GEDmatch PRO portal." (Dkt. 4, ¶¶ 88-89.) Plaintiffs then summarily conclude that "Verogen knowingly and purposefully disclosed to Qiagen the genetic information of every individual with a DNA file in its database at that time—including the genetic information of all of the Plaintiffs and members of the Classes" and that QIAGEN "compell[ed] Verogen to disclose all the genetic information contained in the GEDmatch database as part of the sale to Verogen, Inc." by "requir[ing] Verogen to include the database, and importantly, access to the database, as part of the sale of Verogen to Qiagen." (*Id*., ¶¶ 89, 123, 125.) But Plaintiffs allege no facts to support these conclusions. For instance, Plaintiffs do not allege that, following the sale, any person gained access to the GEDmatch database that did not have access to it prior to the acquisition; that the Plaintiffs' DNA kits were handled in a way that was not authorized by GEDmatch's governing Terms of Use and Privacy Policies; or that their DNA kits were used for any new purpose not contemplated under the Terms of Use and Privacy Policies that they agreed to when they voluntarily provided their DNA kit to Verogen. (*See* 23andMe Order, Exhibit 2.) Plaintiffs further allege no facts that would support a claim that QIAGEN compelled disclosure of Plaintiffs' DNA kits, for example, by alleging "that any term of the deal mandated prohibited disclosure." *Blackstone*, 66 F.4th at 690. Plaintiffs have, therefore, failed to allege that the transaction in question was anything more than a "run-of-the-mill" acquisition that constituted anything other than a "change in ownership" of Verogen and have, therefore, failed to state a claim that either Verogen or QIAGEN violated any state's genetic privacy laws by virtue of the sale. *Id*. at 689.

V. CONCLUSION

WHEREFORE, Defendants Verogen, Inc. and Qiagen North American Holdings, Inc. hereby request the Court for entry of an order dismissing each of Plaintiffs' claims with prejudice, and for any other relief the Court deems appropriate.

DATED: July 14, 2025

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