

FILED
8/30/2024 8:07 PM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2024CH08282
Calendar, 13
29187038

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

KIRSTEN CURLEY, individually and on)
behalf of similarly situated individuals,)
)
Plaintiff,)
)
v.)
)
VEROGEN, Inc., a Delaware corporation,)
)
Defendant.)
)

No. 2024CH08282
Hon.
Jury Trial Demanded

FILED DATE: 8/30/2024 8:07 PM 2024CH08282

CLASS ACTION COMPLAINT

Plaintiff Kirsten Curley brings this Class Action Complaint on behalf of herself and all others similarly situated individuals against Verogen, Inc. D/B/A GEDmatch.com (“GEDmatch”, “Verogen” or “Defendant”) for its violations of the Illinois Genetic Information Privacy Act, 410 ILCS 513/1, *et seq.* (“GIPA”), and to obtain redress for persons injured by its conduct. Plaintiff alleges the following based on personal knowledge as to Plaintiff’s own experiences, and as to all other matters, upon information and belief, including an investigation conducted by Plaintiff’s attorneys.

NATURE OF THE ACTION

1. This case concerns the illegal disclosure of the identities of thousands of individuals who were subjected to genetic tests and related other personally identifying information by Defendant GEDmatch, an online company that specializes in DNA analysis.

2. Plaintiff Kirsten Curley brings this lawsuit on behalf of all similarly situated persons to address Defendant’s illegal disclosure of her identity and the fact that she was the subject of a genetic test (herein “Genetic Information”). Unbeknownst to Plaintiff, Defendant

had authorized and placed certain tracking and disclosure technology on its website, GEDmatch.com, which disclosed Plaintiff's Genetic Information to third parties.

3. Defendant's disclosure of Plaintiff's and Class members' Genetic Information was not accidental. Rather, Defendant actively chose to disclose the Genetic Information through its use of sophisticated online tracking technologies geared towards increasing the effectiveness of its online marketing strategy.

4. In enacting GIPA, the Illinois legislature recognized that "[d]espite existing laws, regulations, and professional standards which require or promote voluntary and confidential use of genetic testing information, many members of the public are deterred from seeking genetic testing because of fear that test results will be disclosed without consent in a manner not permitted by law or will be used in a discriminatory manner." See 410 ILCS 513/5(2).

5. Genetic information about a person, including the fact that someone took a genetic test, is among the most confidential and sensitive information in our society, and the mishandling of such information can have serious consequences, including heightened risks for discrimination in the workplace, denial of insurance coverage, and data exposures leading to irreversible privacy harms.

6. Recognizing these concerns, Illinois implemented the Genetic Information Privacy Act ("GIPA"), 410 ILCS 513/1, *et seq.*, to protect the privacy of individuals' genetic testing information.

7. GIPA provides 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 in writing by that individual to receive the information. See 410 ILCS 513/15(a).

8. GIPA further provides that no 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. See 410 ILCS 513/30(a).

9. In other words, GIPA's requirements bestow a right to privacy to not be identified for having a genetic test performed, a right to privacy to their genetic information, and a right to prevent the disclosure of such information without their consent.

10. Defendant owns and controls GEDmatch.com, a website that permits users to upload their DNA data files from different DNA testing companies in order to, among other things, identify unknown family members and explore their genetics.

11. Unfortunately for Plaintiff and other similarly situated individuals, embedded in Defendant's website were surreptitious analytical tools which were used to gather and disclose their confidential information, including Genetic Information, in order to better permit GEDmatch to engage in highly targeted online advertising.

JURISDICTION AND VENUE

12. The Circuit Court of Cook County, Illinois may assert personal jurisdiction over Defendant pursuant to 735 ILCS 5/2-209 because Verogen is doing business within Illinois, and because Plaintiff's claims arise out of Defendant's unlawful Illinois actions, as it disclosed Plaintiff's Genetic Information in Illinois.

13. Venue is proper in Cook County pursuant to 735 ILCS 5/2-101, because Verogen is doing business in Cook County and thus resides there under § 2-102, and because the illegal disclosure of Genetic Information out of which this cause of action arises occurred in Cook County.

THE PARTIES

14. Plaintiff Kirsten Curley is a citizen of the State of Illinois and has at all times resided in Skokie, Illinois.

15. Verogen Inc. d/b/a GEDmatch is a company organized under the laws of Delaware.

FACTUAL ALLEGATIONS

16. GEDmatch is a company that provides DNA comparison services and tools, and operates the website GEDmatch.com.

17. GEDmatch advertises that GEDmatch.com is “the place to explore your family history by matching DNA data you can get from a genetic DNA testing kit company like 23andMe or AncestryDNA.”¹

18. To use GEDmatch.com, users take a genetic test (from a variety of companies or providers) and download the results of that test to a standard DNA file—*i.e.*, a compressed ZIP file containing a full description of the user’s genetic information.² Next, users upload the DNA file to the GEDmatch website for processing. Within 24 hours, users can access analytical tools that compare their own genetic information to other DNA files within the GEDmatch database.³
4

19. GEDmatch tells its users that “your privacy and security are paramount.”⁵ To reassure users about the privacy of information submitted on its site, GEDmatch encourages users to use aliases and anonymous email addresses when using the site.⁶

¹ <https://www.GEDmatch.com/why-join/> (last visited Mar. 20, 2024).

² *See, e.g.*, Downloading DNA Data, Ancestry.com, https://support.ancestry.com/s/article/Downloading-DNA-Data?language=en_US (last visited Mar. 20, 2024).

³ “Introduction to GEDmatch: How to Get Started, Upload Your DNA, Find Relatives, Find Matches,” GEDmatch, https://www.youtube.com/watch?v=_NduRUO1GMw&t=53s (last visited Mar. 20, 2024).

⁴ “How it Works, Find Family Members From Around the World Using DNA Matching:” <https://www.gedmatch.com/how-it-works/> (last visited March 23, 2024).

⁵ *Is GEDmatch Safe?*, GEDmatch, <https://www.GEDmatch.com/privacy-security/> (last visited Mar. 21, 2024).

⁶ *Id.*

20. However, unbeknownst to GEDmatch users, Defendant used technology pioneered by Meta Platforms, Inc. (parent company of Facebook herein “Meta” or “Facebook”), including the Facebook Pixel (“Pixel”), a piece of tracking code, embedded on thousands of websites, including that of GEDmatch, to illegally disclose the confidential Genetic Information of Plaintiff.

21. The Pixel operates on GEDmatch.com in the background pursuant to an undisclosed written agreement between GEDmatch and Facebook. By virtue of such agreement GEDmatch disclosed users’ identities and the fact that they were subjected to genetic tests to Facebook. Not only that, such information is also associated with all other Personally Identifiable Information in Facebook’s possession including their names, unique and persistent Facebook ID’s, (“FID”) and IP addresses.^{7,8}

22. By default, the Pixel uses both first-party and third-party cookies to transmit website visitors’ information to Facebook, and Facebook’s Conversions Application Programming Interface (“CAPI”) is automatically implemented when websites—such as GEDmatch—install the Pixel on their Website servers.⁹

23. Unlike the Facebook Pixel, CAPI does not transmit any information via the web browser. Instead, CAPI tracks the user’s website interactions and communications, records and

⁷ The Pixel forces the website user to share the user’s FID for easy tracking via the “cookie” Facebook stores every time someone accesses their Facebook account from the same web browser. “Cookies are small files of information that a web server generates and sends to a web browser.” “Cookies help inform websites about the user, enabling the websites to personalize the user experience.” <https://www.cloudflare.com/learning/privacy/what-are-cookies/> (last visited Apr. 25, 2023).

⁸ The FID is categorized as a third-party cookie, and it identifies a particular person and their actions or communications with a website, such as www.GEDmatch.com, whenever the owner of that website has installed the Facebook Pixel.

⁹ “CAPI works with your Facebook pixel to help improve the performance and measurement of your Facebook ad campaigns.” See *How to Implement Facebook Conversions API*, FETCH&FUNNEL, <https://www.fetchfunnel.com/how-to-implement-facebook-conversions-api-in-shopify/> (last visited March 20, 2024).

stores that information on the website owner's servers, and then transmits the data to Facebook directly from the website owner's servers.^{10, 11}

24. Because CAPI is located on the website owner's servers and not the website user's browser, it allows GEDmatch to collect and disclose website users' information to Facebook even if the user employs ad blockers or other denials of consent.

25. Plaintiff and other Class members who uploaded their DNA files to GEDmatch's website thought they were communicating only with GEDmatch. But Defendant, through the Pixel and/or CAPI, surreptitiously disclosed their identities and the fact that they were the subject of genetic tests to Facebook.

26. Thus, Defendant is illegally disclosing individuals' identities and some of their most confidential Genetic Information. The information disclosed is exactly the kind of Genetic Information protected under GIPA.

27. GEDmatch disclosed Plaintiff's and Class members' Genetic Information to Facebook in order to better create targeted advertisements based on the information Plaintiff and the Class members shared with GEDmatch, and all other information available to Facebook, including through GEDmatch, the Class members' Genetic Information.

28. Reasonable persons simply do not anticipate that their Genetic Information will be disclosed to an unauthorized third party – let alone Facebook, which has a sordid history of privacy violations in pursuit of ever-increasing advertising revenue. Neither Plaintiff nor any other Class

¹⁰ *What is the Facebook Conversions API and how to use it*, <https://revealbot.com/blog/facebook-conversions-api/> (last visited March 20, 2024).

¹¹ "Server events are linked to a dataset ID and are processed like events sent via the Meta Pixel.... This means that server events may be used in measurement, reporting, or optimization in a similar way as other connection channels.", *Conversions API*, META FOR DEVELOPERS, <https://developers.facebook.com/docs/marketing-api/conversions-api> (last visited March 20, 2024).

member signed a written authorization permitting GEDmatch to disclose their Genetic Information to anyone, let alone Facebook.

29. As a result of Defendant's conduct, Plaintiff seeks to remedy these harms and brings a cause of action for violations of GIPA, 410 ILCS 513/1, *et seq.*

30. When a person visits a website that is hosting the Pixel, the Pixel begins "listening in," much like a traditional wiretap, as soon as the website loads. The Pixel lies hidden within the page, waiting to be triggered.

31. Thus, the Pixel was triggered each time Plaintiff and Class members communicated with GEDmatch, in the form of HTTP Requests to the GEDmatch server. Upon triggering of the Pixel, Facebook secretly intercepted the user's communications at the same time the message was dispatched to GEDmatch. Thus, two simultaneous communications originate from a user's browser once the user initiates an action GEDmatch: one, as intended, to GEDmatch, and a second, undetectable to and unknown by the user, to Facebook.

A. Plaintiff Kirsten Curley's Genetic Information Was Disclosed by GEDmatch

32. In early 2022, Plaintiff Curley uploaded her DNA file to the GEDmatch website. In doing so, Plaintiff communicated information relating to her identity and, crucially, the fact that she had been the subject of a genetic test—all of which consist of Genetic Information and is protected under GIPA. Without her knowledge or permission, Defendant disclosed this Genetic Information, through use of Facebook's business tools (including Pixel and CAPI) to Facebook without her consent.

33. Plaintiff reasonably expected that her communications with GEDmatch via its website were confidential, solely between herself and GEDmatch, and that such communications would not be disclosed to any third party.

34. Plaintiff has an active Facebook account that she accesses through her phone and desktop computer. Plaintiff's Facebook account contains information that can personally identify her, including her name.

35. Because the GEDmatch website utilizes the Facebook Pixel, the Website's Source Code sent a secret set of instructions back to Plaintiff's browser—which effectively acted as a wiretap—causing the Pixel to send Plaintiff's Facebook ID ("FID"), and the webpage's URL, and the contents of her communications to Defendant (including Genetic Information contained within those communications).

36. Specifically, when Plaintiff Curley uploaded her DNA file to the GEDmatch website, and by operation of Facebook's agreement with GEDmatch and through the Pixel, Defendant disclosed Plaintiff's communications with GEDmatch, including the fact that she uploaded her DNA file and her identity. Additionally, the information disclosed by GEDmatch via the Pixel included Plaintiff's FID, linking her communications with her Facebook profile.

37. Defendant facilitated these disclosures without Plaintiff's knowledge, consent, or express written authorization. By failing to receive the requisite consent, Defendant breached its obligations under GIPA.

38. Upon information and belief, Facebook also received Plaintiff's information directly through the Conversions API, which established a server-to-server data transmission from GEDmatch's Website server.

39. Plaintiff has a continuing interest in ensuring that future communications with GEDmatch are protected and safeguarded from future unauthorized compulsions and disclosures, and that Defendant ceases its illegal disclosure of Genetic Information.

40. As a result of Defendant's disclosure of the identities of thousands of Illinois consumers who had a genetic test performed without their written consent, including that of Plaintiff and the other Class members, Defendant has violated GIPA.

CLASS ACTION ALLEGATIONS

41. Pursuant to 735 ILCS 5/2-801 Plaintiff brings this action on behalf of herself and on behalf of a class (the "Class") defined as follows:

Class: All Illinois individuals who, during the applicable statute of limitations, (i) had a Facebook account; and (ii) uploaded their DNA file to GEDmatch.com according to Defendant's records.

42. Plaintiff reserves the right to modify the class definition or add sub-classes as necessary prior to filing a motion for class certification.

43. Excluded from the Class are Defendant; any affiliate, parent, or subsidiary of Defendant; any entity in which Defendant has a controlling interest; any officer director, or employee of Defendant; any successor or assign of Defendant; anyone employed by counsel in this action; any judge to whom this case is assigned, his or her spouse and immediate family members; and members of the judge's staff.

44. Numerosity/Ascertainability. Members of the Class are so numerous that joinder of all members would be unfeasible and not practicable. The exact number of Class members is unknown to Plaintiff currently. However, it is estimated that there are thousands of individuals in the Class. The identity of such membership is readily ascertainable from Defendant's records and non-party records, including the records of Facebook.

45. Typicality. Plaintiff's claims are typical of the claims of the Class and because Plaintiff used the GEDmatch website and had her Genetic Information disclosed without her express written authorization or knowledge. Plaintiff's claims are based on the same legal theories as the claims of other Class members.

46. Adequacy. Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the Class members. Plaintiff's interests are coincident with, and not antagonistic to, those of the Class members. Plaintiff is represented by attorneys with experience in the prosecution of class action litigation generally and in the emerging field of digital privacy litigation specifically. Plaintiff's attorneys are committed to vigorously prosecuting this action on behalf of the Class members.

47. Common Questions of Law and Fact Predominate/Well Defined Community of Interest. Questions of law and fact common to the Class members predominate over questions that may affect only individual Class members because Defendant has acted on grounds generally applicable to the Class. Such generally applicable conduct is inherent in Defendant's wrongful conduct. The following questions of law and fact are common to the Class:

- (a) Whether Defendant's conduct is subject to GIPA;
- (b) Whether Defendant disclosed Plaintiff's and the Class members' Genetic Information;
- (c) Whether Defendant discloses Genetic Information to advertisers and/or other third parties;
- (d) Whether Defendant obtained written authorization from Plaintiff and the other Class members before disclosing their Genetic Information;
- (e) Whether Defendant's violations of GIPA were willful or reckless;
- (f) Whether Defendant's violations of GIPA were negligent;
- (g) Whether Plaintiff and the Class members are entitled to damages and injunctive relief.

48. Superiority. Class action treatment is a superior method for the fair and efficient adjudication of the controversy. Such treatment will permit many similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, or expense that numerous individual actions would engender. The benefits of proceeding through the class mechanism, including providing injured persons a method for obtaining redress on claims that could not practicably be pursued individually, substantially outweighs potential difficulties in management of this class action. Plaintiff is unaware of any special difficulty to be encountered in litigating this action that would preclude its maintenance as a class action.

CAUSE OF ACTION

**Violation of the Illinois Genetic Information Privacy Act, 410 ILCS 513/1, et seq.
(On behalf of Plaintiff and the Class)**

49. Plaintiff repeats the allegations contained in the paragraphs above as if fully set forth herein and bring this count individually and on behalf of the proposed Class.

50. Defendant Verogen, Inc. is a corporation and, therefore, a “person” under 410 ILCS 513/10.

51. The information that Defendant obtained from Plaintiff and the Class is the type of information protected by GIPA. 410 ILCS 513/10.

52. GIPA states that no 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. See 410 ILCS 513/30(a).

53. Plaintiff and the members of the Class are individuals who uploaded their DNA data files to GEDmatch.

54. Defendant, through the use of the Facebook Pixel and CAPI, disclosed Plaintiff’s and Class members’ Genetic Information which consists of the fact that they uploaded their genetic

information and had a genetic test performed and their identities to Facebook and/or other unapproved third parties.

55. In other words, Defendant disclosed Plaintiff and the other Class members' identities who had been the subject of genetic tests. See 410 ILCS 513/30(a).

56. Defendant failed to obtain written authorization from Plaintiff or the members of the Class to disclose their Genetic Information, as required by 410 ILCS 513/30(a) and 410 ILCS 513/35.

57. Plaintiff and the other Class members have been aggrieved by Defendant's violations of their statutorily protected rights to privacy in their genetic information as set forth in GIPA when Defendant disclosed their identities without their consent.

58. Defendant's violations of GIPA, as set forth herein, were knowing and willful, or were at least in reckless disregard of the statutory requirements. Alternatively, Defendant negligently failed to comply with GIPA.

59. On behalf of herself and the Class, Plaintiff seeks: (1) injunctive and equitable relief as is necessary to protect the interests of Plaintiff and the Class by requiring Defendant to comply with GIPA's requirements; (2) statutory damages of \$15,000 for each intentional and/or reckless violation of GIPA pursuant to 410 ILCS 513/40(a)(2) or, in the alternative, statutory damages of \$2,500 for each negligent violation of GIPA pursuant to 410 ILCS 513/40(a)(1); and (3) reasonable attorneys' fees and costs and other litigation expenses pursuant to 410 ILCS 513/40(a)(3).

RELIEF REQUESTED

Plaintiff, on behalf of herself and the proposed Class, respectfully requests that the Court enter an Order:

- (a) Certifying this action as a class action and appointing Plaintiff and Plaintiff's counsel to represent the Class;
- (b) Declaring that Defendant's actions violate GIPA, 410 ILCS 513/1, *et seq.*;
- (c) Awarding Plaintiff and the Class statutory damages of \$15,000.00 for each and every intentional and /or reckless violation of GIPA pursuant to 410 ILCS 513(40)(a)(2), or alternatively, statutory damages of \$2,500 for each and every violation pursuant to 410 ILCS 513(40)(a)(1) if the Court finds that Defendant's violations were negligent;
- (d) Awarding injunctive and other equitable relief as is necessary pursuant to 410 ILCS 513(40)(a)(4) to protect the interests of the Class;
- (e) Awarding Plaintiff and the Class their reasonable attorneys' fees and costs of other litigation expenses, pursuant to 410 ILCS 513/40(a)(3);
- (f) Awarding Plaintiff and the Class and pre- and post-judgment interest, to the extent allowable; and
- (g) Awarding such other and further relief as equity and justice may require.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and the proposed Class, demand a trial by jury for all the claims asserted in this Complaint so triable.

Dated: August 30, 2024

Respectfully Submitted,

KIRSTEN CURLEY, individually and on behalf of a class of similarly situated individuals

By: /s/ Joseph M. Dunklin
One of Plaintiff's Attorneys

FILED DATE: 8/30/2024 8:07 PM 2024CH08282

MCGUIRE LAW, P.C.
Myles McGuire
David L. Gerbie
Andrew Heldut
Joseph M. Dunklin
55 W. Wacker Drive, 9th Fl.
Chicago, IL 60601
Tel: (312) 893-7002
mmcguire@mcgpc.com
dgerbie@mcgpc.com
aheldut@mcgpc.com
jdunklin@mcgpc.com

LYNCH CARPENTER, LLP
Katrina Carroll
katrina@lcllp.com
Kyle Shamberg
kyle@lcllp.com
111 W. Washington St., Ste. 1240
Chicago, IL 60602
Tel.: (312) 750-1265

FREED KANNER LONDON
& MILLEN LLC
Jonathan M. Jagher
jjagher@fkmlaw.com
923 Fayette Street
Conshohocken, PA 19428
Tel.: (610) 234-6486

Attorneys for Plaintiff and the Putative Class