

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE</b> Civil Complex Center 751 W. Santa Ana Blvd Santa Ana, CA 92701	
<b>SHORT TITLE:</b> Yahoo! Inc. Private Information Disclosure Cases	
<b>CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE</b>	<b>CASE NUMBER:</b> <b>JCCP 4895</b>

I certify that I am not a party to this cause. I certify that the following document(s), Minute Order dated 12/13/17, have been transmitted electronically by Orange County Superior Court at Santa Ana, CA. The transmission originated from Orange County Superior Court email address on December 13, 2017, at 3:54:36 PM PST. The electronically transmitted document(s) is in accordance with rule 2.251 of the California Rules of Court, addressed as shown above. The list of electronically served recipients are listed below:

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**CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE**

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF ORANGE  
CIVIL COMPLEX CENTER**

**MINUTE ORDER**

DATE: 12/13/2017

TIME: 03:39:00 PM

DEPT: CX105

JUDICIAL OFFICER PRESIDING: Thierry Patrick Colaw

CLERK: P. Rief

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: None

CASE NO: **JCCP 4895**

CASE INIT.DATE: 11/03/2016

CASE TITLE: **Yahoo! Inc. Private Information Disclosure Cases**

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Non-PI/PD/WD tort - Other

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EVENT ID/DOCUMENT ID: 72716825

**EVENT TYPE:** Under Submission Ruling

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**APPEARANCES**

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DEMURRER OF DEFENDANT YAHOO! INC. TO PLAINTIFFS' CONSOLIDATED CLASS ACTION COMPLAINT

There are no appearances by any party.

The court, having taken the above-entitled matter under submission on 12/08/2017 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

A. The Ruling:

The court sustains in part the demurrer by Yahoo! Inc. ("Yahoo") to the Consolidated Class Action Complaint (the "Complaint") filed by Plaintiffs Jared Pastor, Brendan Quinn, John Bell, Hilary Gamache, Jana Brabcova, Michelle Bouras, and Reid Bracken (collectively, "Plaintiffs") as follows:

1. The demurrer is sustained, with 30 days leave to amend, as to the First Cause of Action; and
2. The demurrer is otherwise overruled.

B. Requests for Judicial Notice

The court denies Yahoo's request for judicial notice of Exhibits A-E and J. None of those documents appear to be properly subject to judicial notice over Plaintiffs' objections and, to the extent the court might properly take judicial notice of one or more of the documents themselves, it does not appear judicial notice would be proper of the matters within those documents for which they are offered.

However, the court grants Yahoo's request for judicial notice of Exhibits F-I, K, and L. Plaintiffs do not dispute the authenticity of the proffered documents. Judicial notice is therefore appropriate as to the existence of each of those documents, as well as their contents and the clear legal effects thereof (if any); but not the truth of any statements contained therein. (Evid. Code, §§ 452, subds. (C) and (h), 453.)

### C. Failure to Allege Injury Caused by Yahoo

Yahoo first argues broadly that Plaintiffs' causes of action all fail because Plaintiffs have not adequately pleaded any injury or harm suffered as a result of any conduct by Yahoo, as opposed to Plaintiffs' own conduct or the conduct of another. The court disagrees. The well-pleaded allegations in the Complaint are sufficient to establish Plaintiffs suffered damages and harm as a result of Yahoo's alleged failure to adequately secure their data. Proving the truth of those allegations, and whether Plaintiffs or other third parties are partially or entirely responsible for the alleged damages/harms, are issues for another day. They cannot be resolved on demurrer.

#### (1) First Cause of Action (Violation of the California Consumers Legal Remedies Act)

Yahoo argues this cause of action fails to state a claim for relief because:

- (a) Plaintiffs do not qualify as "consumers" within the meaning of the CRLA because their accounts with Yahoo were free; and
- (b) Yahoo's "e-mail platform" is not a "good" or "service" within the meaning of the CRLA. The second argument appear dispositive.

Plaintiffs allege Yahoo violated Civil Code section 1770, subdivisions (a) (5) and (a) (7). Those provisions prohibit the making of certain representations "by any person in a transaction intended to result or that results in the sale or lease of goods or services to any consumer." (Civ. Code, § 1770, subd. (a).) As Yahoo correctly contends, "goods" are defined to include only tangible chattel. (Civ. Code, § 1761, subd. (a).) Services are limited to "work, labor, and services for other than a commercial or business use, including services furnished in connection with the sale or repair of goods." (Civ. Code, § 1761, subd. (b).)

While neither side cites any binding authority on point, Plaintiffs concede no California court has yet found the provision of e-mail services (or other intangible, Internet-based services) to constitute a "good" or "service" within the meaning of the CRLA. The federal authorities cited by the parties persuade the court that Plaintiffs have not alleged Yahoo provided any relevant "service" within the meaning of the CRLA, and so none of the conduct alleged in the Complaint would constitute a violation of Civil Code section 1770, subdivisions (a)(5) or (a)(7).

To the extent Plaintiffs argue the court should extend the CRLA to apply to a situation like the one currently alleged, the court declines to do so in the absence of any persuasive authority suggesting doing so would be appropriate. The extension Plaintiffs seek may be more appropriately addressed to the Legislature than the courts.

#### (2) Second Cause of Action (Violation of the Unfair Competition Law)

Yahoo argues Plaintiffs' claim under the Unfair Business Practices Act (Business & Professions Code, §

17200, et seq.) fails because:

- (1) Plaintiffs have alleged an adequate remedy at law; and
- (2) Plaintiffs have not adequately pleaded any "unfair," "fraudulent," or "unlawful" conduct by Yahoo.

Yahoo's first argument fails at the demurrer stage, because none of the authority cited by Yahoo suggests the adequacy of a legal remedy is an appropriate basis for dismissing a claim like this one at the demurrer stage. The court may ultimately find that Plaintiffs are not entitled to any legal remedy. In such a situation, Plaintiffs may be entitled to argue they are nevertheless entitled to equitable relief under this cause of action.

Yahoo's second argument is also unpersuasive. As to the "fraudulent" prong, Yahoo argues Plaintiffs' claim is precluded by express disclaimers contained in documents offered as Exhibits A and B to Yahoo's Request for Judicial Notice in connection with this demurrer. As discussed above, the court finds neither those documents nor their contents are properly subject to judicial notice. Therefore, Yahoo has not shown Plaintiffs failed to plead at least a claim under the "fraudulent" prong. Accordingly, the court cannot sustain the demurrer to this cause of action. (See *Kong v. City of Hawaiian Gardens Redevelopment Agency* (2002) 108 Cal.App.4th 1028, 1047 ["a demurrer cannot rightfully be sustained to part of a cause of action"].)

(3) Third Cause of Action  
(Violation of California Consumer Records Act)

Yahoo argues this cause of action fails to state a claim for relief because: (1) the 2013 Data Breach did not trigger a notice under the CRA; (2) the alleged "Forged Cookies Breach" did not result in the disclosure of any "personal information" within the meaning of the CRA; and (3) a "mere delay in notification is not enough to state a claim under the CRA."

When read together and liberally interpreted (as they must be at the demurrer stage), Plaintiffs' allegations are sufficient to allege that the "Forged Cookie Breach" resulted in the disclosure of "personal information" within the meaning of the CRA, and that Yahoo's failure to timely give the required notice resulted in damages to Plaintiffs. Of course, the ultimate merits of this claim are unclear. The court merely finds Plaintiffs' allegations are sufficient to survive the arguments raised in this demurrer.

(4) Fourth Cause of Action  
(Negligence)

Yahoo argues this cause of action fails to state a claim for relief because it is barred by the Economic Loss Rule.

Plaintiffs correctly respond, however, that they have alleged facts sufficient to demonstrate a special relationship between themselves and Yahoo that would preclude application of the Economic Loss Rule. (See *J'Aire Corporation v. Gregory* (1979) 24 Cal.3d 799, 804.) Though Yahoo argues the "special relationship" exception to the Economic Loss Rule is inapplicable where the parties are in contractual privity, the court cannot yet determine whether such privity existed between any of the plaintiffs and Yahoo. Pleading the existence of a special relationship in this cause of action, together with Plaintiffs' Fifth Cause of Action for breach of contract, appears to be nothing more than an appropriate exercise of Plaintiffs' right to plead alternative theories of recovery.

(5) Fifth Cause of Action  
(Breach of Contract)

Yahoo argues this cause of action does not state a claim for relief because: (1) Plaintiffs failed to allege an enforceable promise broken by Yahoo; and (2) Plaintiffs cannot recover any of their alleged damages based on a limitation-of-liability provision in Yahoo's Terms of Service.

Yahoo's first argument fails at this stage because Plaintiffs adequately pleaded that Yahoo "shared its users' PII with identity thieves" in violation of Yahoo's Privacy Policy. It is far from clear whether that allegation is true (i.e., whether Yahoo's conduct amounts to "shar[ing]" within the meaning of the purported Privacy Policy), but it must be accepted as true for the purpose of this demurrer.

Yahoo's second argument also fails at this stage because it is premised on Exhibit A to Yahoo's Request for Judicial Notice in connection with this demurrer. As discussed above, the court finds neither those documents nor their contents are properly subject to judicial notice.

(6) Sixth Cause of Action  
(Invasion of Privacy)

Finally, Yahoo argues this cause of action does not state a claim for relief because Plaintiffs have not alleged: (1) any intentional invasion of their privacy by Yahoo; (2) a "serious" invasion of any privacy interest; or (3) a disclosure of private information that is sufficiently public. These arguments are unpersuasive.

Plaintiffs correctly respond that they have adequately pleaded Yahoo's knowing and intentional failure to adequately safeguard Plaintiffs' personal and private information. Moreover, the amount and type of information allegedly disclosed to third-parties, who in turn published that information on the Internet for public consumption, appear sufficient to survive the arguments raised by Yahoo in this demurrer.

Again, the court emphasizes that its role at the demurrer stage is only to determine whether Plaintiffs have adequately pleaded their causes of action in light of the arguments raised on demurrer. The ultimate merits of this claim (and Plaintiffs' other claims for which this demurrer is overruled) are yet to be decided.

D. Amended Complaint and Notice of Order

Plaintiffs may file and serve any amended complaint within 30 days after service of notice of this order. If Plaintiffs fail to do so, Yahoo is to file and serve its answer(s) to the remaining claims at issue in the Complaint within 15 days thereafter.

If Plaintiffs choose to file an amended complaint, they must also file and serve a redline showing all differences between the Complaint and the amended complaint.

The clerk is ordered to give notice by electronic service.