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15 **UNITED STATES DISTRICT COURT**  
16 **NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION**

17 IN RE: YAHOO! INC. CUSTOMER DATA )  
SECURITY BREACH LITIGATION )

No. 16-md-02752-LHK

18 ) **MEMORANDUM OF POINTS AND**  
19 ) **AUTHORITIES IN SUPPORT OF**  
20 ) **PLAINTIFFS' MOTION FOR FINAL**  
21 ) **APPROVAL**

22 ) Date: April 2, 2020

23 ) Time: 1:30 p.m.

24 ) Courtroom: 8, 4th Floor

25 ) Judge: Hon. Lucy H. Koh

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## I. INTRODUCTION

This matter was hard-fought during active litigation, and preliminary approval of its resolution was similarly forged in the crucible of this Court's careful consideration. Following the Court's denial of preliminary approval (ECF Nos. 353, 357), the Parties immediately set about addressing the Court's watchful critiques, re-engineering the resolution of this case into, *inter alia*, a \$117.5 million Settlement Fund, and resulting, ultimately, in an approval Order being entered on July 20, 2019, (ECF No. 390). Following in the wake of that approval and the associated robust notice and administration plan, Plaintiffs now move for final approval of the settlement.

The response from the Settlement Class<sup>1</sup> has been positive: as of January 27, 2020, over 819,000 claims have been submitted; only 224 Class Members opted-out of the settlement; and 10 objections were received. *See* Declaration of Jeanne Finegan at ¶¶ 44–46, attached as Exhibit 1, hereinafter "Finegan Decl." If finally approved, Settlement Class Members will be eligible to receive reimbursement for Out-of-Pocket Costs, reimbursement for a portion of Paid and Small Business User Costs, and Credit Services or Alternative Compensation, as applicable. Moreover, as a result of the Settlement, Yahoo has undertaken to implement detailed business practice changes designed to enhance the security of the Class's Personal Information.

Accordingly, Plaintiffs respectfully request the Court to enter an order: (1) finally approving the Settlement; (2) finally certifying the Settlement Class; (3) finally appointing the Settlement Class Representatives; (4) finally appointing Settlement Class Counsel; (5) finding that the Notice Program as implemented was designed to and did ensure protection of the due process rights of the Settlement Class such that the Court may exercise jurisdiction over the Class; and (6) overruling all objections.<sup>2</sup>

## II. BACKGROUND

### A. The Breaches

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<sup>1</sup> Unless otherwise noted, all capitalized terms are defined in the Amended Settlement Agreement and Release, which was previously filed (ECF No. 369-2) and is referred to hereafter as "SA" or "Settlement."

<sup>2</sup> The objection deadline is March 6, 2020. Following passage of the deadline, Plaintiffs propose filing an omnibus response to all received objections, as further described below in section VI.B.2.

1 This case revolves around multiple cybersecurity incidents occurring at Yahoo from 2012  
2 through 2016. Specifically, in September 2016, Yahoo revealed that Personal Information  
3 “associated with at least 500 million [worldwide] user accounts was stolen” from Yahoo’s UDB  
4 in late 2014 (the “2014 Breach”).<sup>3</sup> A few months later, Yahoo revealed that “an unauthorized third  
5 party, in August 2013, stole [Personal Information] associated with more than one billion  
6 [worldwide] user accounts” (the “2013 Breach”). Cert. Memo, Ex. 14. Ten months later, it was  
7 announced that the 2013 Breach affected all three billion existing worldwide accounts. *Id.*, Ex. 13.  
8 Around the same time the 2013 Breach was first announced, Yahoo confirmed that “an  
9 unauthorized third party accessed the company’s proprietary code to learn how to forge cookies,”  
10 and that the “cookie forging activity” had continued for more than one and a half years, from early  
11 2015 through September 2016 (the “Forged Cookie Breach”). *See id.*, Ex. 14; *id.* Ex. 11 at 918.  
12 During the course of discovery, Plaintiffs uncovered evidence regarding cybersecurity incidents  
13 in 2012 as well. Specifically, in January 2012, cybersecurity firm Mandiant investigated a potential  
14 breach at Yahoo. Second Amended Complaint (“SAC”) ¶¶ 2, 71–80, (ECF No. 387-4). Mandiant  
15 found that two different Advanced Persistent Threat (APT) hacking groups were actively  
16 compromising Yahoo’s systems (“2012 Intrusions”)—the available evidence, however, does not  
17 reveal that user credentials, email accounts, or the contents of emails were taken out of Yahoo’s  
18 systems as a result. *Id.* ¶¶ 3, 74–76, 78.<sup>4</sup> Collectively, the Data Breaches impacted approximately  
19 one billion U.S. and Israeli accounts; approximately 194 million users.<sup>5</sup> (ECF No. 369 at 14–15).<sup>6</sup>

## 20 **B. Federal and State Proceedings**

21 Beginning in September 2016, multiple class-action lawsuits were filed against Yahoo and  
22

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23 <sup>3</sup> *See* Memorandum of Points and Authorities In Support of Plaintiffs’ Motion for Class  
24 Certification (“Cert. Memo”) (ECF No. 248-5 at 9), and its Exhibit 10. To avoid further burdening  
25 the record, Plaintiffs will cite to the Cert. Memo and its exhibits rather than re-attaching those  
26 exhibits.

25 <sup>4</sup> The 2013, 2014, and Forged Cookie breaches, along with the 2012 Intrusions, are referred to  
26 jointly as the “Data Breaches.”

26 <sup>5</sup> The MDL included claims on behalf of users residing in Israel with Yahoo accounts between  
27 2012 and 2016, as Israeli users specifically agreed in the TOS to be bound by California law, and  
28 to litigate any disputes relating to their use of Yahoo in the United States.

28 <sup>6</sup> Pincites to PACER material refers to the Court’s pagination in the upper-right-hand corner.

1 other Defendants in federal courts across the country and in California state courts, alleging that  
2 Defendants failed to properly protect personal information in accordance with their duties, had  
3 inadequate data security, and delayed notifying potentially impacted individuals of the Data  
4 Breaches. On December 7, 2016, the Judicial Panel on Multidistrict Litigation transferred several  
5 federal lawsuits to this Court (the “MDL Court”) for coordinated pretrial proceedings in *In re:*  
6 *Yahoo! Inc. Customer Data Breach Security Litigation*, No. 16-md-02752-LHK (N.D. Cal.)  
7 (“MDL Case”). (ECF No. 1).

8           Meanwhile, multiple parallel actions were also coordinated in California state court, which,  
9 on February 28, 2017, were assigned by the Judicial Council to a coordination trial judge for  
10 coordinated pretrial proceedings, in *Yahoo! Inc. Private Information Disclosure Cases*, JCCP No.  
11 4895 (Orange Cnty. Sup. Ct.) (the “JCCP Case”). *See* Declaration of Daniel S. Robinson  
12 (“Robinson Dec.”), and its Ex. 3, previously filed at ECF No. 369-16, 369-19. On March 14, 2017,  
13 the Orange County Superior Court Presiding Judge assigned the Honorable Thierry P. Colaw  
14 (Ret.)<sup>7</sup> (“JCCP Court”) to be the coordination trial judge in the JCCP Court. (ECF No. 369-20).  
15 Leadership was appointed in both the MDL Case and JCCP Case.<sup>8</sup> Yahoo moved to stay the JCCP  
16 Case, and, after briefing and oral argument, the JCCP Court denied Yahoo’s motion. (Doc. 369-  
17 16 ¶ 19)

18           Just before that decision, JCCP Plaintiffs had filed a Consolidated Complaint on June 27,  
19

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20 <sup>7</sup> Following Judge Colaw’s retirement in January 2018, the JCCP case was re-assigned to Judge  
21 Glenda Sanders, who when presented with the Parties proposed settlement approval process said  
the process “makes sense.” Robinson Decl. ¶ 33, Ex. 8

22 <sup>8</sup> On February 9, 2017, this Court appointed John Yanchunis of Morgan & Morgan Complex  
23 Litigation Group as Lead Counsel, and Ariana J. Tadler of Milberg LLP (later of Milberg Tadler  
24 Phillips Grossman LLP, and now Tadler Law LLP), Stuart Davidson of Robins Geller Rudman &  
25 Dowd LLP, Gayle Blatt of Casey Gerry Schenk Francavilla Blatt & Penfield LLP, and Karen  
26 Hanson Riebel of Lockridge Grindal Nauen PLLP, to the Plaintiffs’ Executive Committee  
27 representing Plaintiffs and putative class members in the MDL Case (“MDL Class Counsel”). On  
28 May 26, 2017, the JCCP Court approved and entered JCCP Case Management Order No. 1  
appointing Daniel S. Robinson of Robinson Calcagnie, Inc. and Brian Chase of Bisnar | Chase  
LLP as Co-Lead Counsel, Eric A. Grover of Keller Grover LLP as Liaison Counsel, and Jeremiah  
Frei-Pearson of Finkelstein, Blankinship, Frei-Pearson & Garber LLP, Neil Fineman of Fineman  
Poliner LLP, Robert Samini of Samini Scheinberg PC, Nathan Smith of Brown Neri Smith & Khan  
LLP, and Brian Kabateck of Kabateck Brown Kellner LLP to the Plaintiffs’ Steering Committee,  
to represent Plaintiffs and putative class Members in the JCCP Case (“JCCP Class Counsel”). ECF  
No. 369-21.

1 2017, alleging six causes of action: (1) violation of California’s Consumers Legal Remedies Act,  
2 Cal. Civ. Code §§ 1750, et seq.; (2) violation of California’s Unfair Competition Law, Cal. Bus.  
3 & Prof. Code §§ 17200, et seq.; (3) violation of California’s Customer Records Act, Cal. Civ.  
4 Code §§ 1798.80 et. seq.; (4) negligence; (5) breach of contract; and (6) invasion of privacy under  
5 the California Constitution. (*Id.* ¶ 20). Yahoo filed a demurrer attacking all causes of action, and  
6 after briefing and oral argument, the JCCP Court overruled the demurrer on December 13, 2017,  
7 except for Plaintiffs’ CLRA Claim. (*Id.* ¶¶ 21). Notably, the JCCP Court allowed JCCP Plaintiffs’  
8 negligence claim to survive, finding a special relationship exception to the Economic Loss  
9 Doctrine, a claim which MDL Plaintiffs then added in their First Amended Consolidated Class  
10 Action Complaint, ECF No. 179 (filed Dec. 19, 2017).

11 Throughout discovery, MDL and JCCP Class Counsel worked cooperatively in the  
12 scheduling and taking of offensive depositions.

### 13 C. Litigation History

14 Following centralization, MDL Class Counsel filed a Consolidated Class Action  
15 Complaint (“CAC”) (ECF No. 80), Defendants moved to dismiss the CAC, (ECF No. 94), and this  
16 Court granted in part and denied in part the motion by Order dated August 30, 2017 (ECF No.  
17 132). On December 19, 2017, MDL Class Counsel filed a First Amended Consolidated Class  
18 Action Complaint (“FAC”) (ECF No. 179), Defendants moved to dismiss (ECF No. 205), and this  
19 Court granted in part and denied in part the motion on March 9, 2018 (ECF No. 215).

20 As to the JCCP action, on May 25, 2017, Yahoo moved to stay the proceeding. After  
21 briefing and argument on the issue, JCCP Class Counsel filed a Consolidated Complaint alleging  
22 state-law claims. (ECF No. 369-22). The JCCP Court ultimately denied Yahoo’s motion to stay  
23 on June 23, 2017. (ECF No. 369-16 ¶ 19). On July 27, 2017, Yahoo demurred, which, after briefing  
24 and argument, the JCCP Court sustained in part the claims for violation of California’s Unfair  
25 Competition Law, Customer Records Act, negligence, breach of contract, and invasion of privacy  
26 under the California Constitution. *See (id.* ¶¶ 19-21); (ECF No. 369-23).

27 Throughout this time, discovery was ongoing. Initially, the Parties negotiated for Yahoo to  
28 begin producing certain documents prior to the start of formal discovery. The Parties then engaged



1 in extensive discussions to reach a series of stipulated discovery orders (including Protective Order  
2 (ECF No. 73), ESI protocol (ECF No. 74), Rule 502 Order (ECF No. 76), and ESI Search Protocol  
3 (ECF No. 104)), and multiple rounds of negotiations to reach agreement on hundreds of search  
4 terms.<sup>9</sup> Yahoo produced over 9 million pages of documents, and Plaintiffs’ Counsel categorized,  
5 reviewed and analyzed the documents thereby providing Plaintiffs’ counsel and their experts with  
6 a detailed understanding of how the Breaches occurred, why they occurred, and what Yahoo did  
7 (and did not do) in response. (ECF No. 369-1 ¶ 8); (ECF No. 369-32 ¶¶ 16–18). With this wealth  
8 of knowledge, and the aid of their cybersecurity experts, Plaintiffs identified the critical  
9 information security personnel who worked at Yahoo during the relevant time periods. In addition  
10 to three days of Yahoo corporate representative depositions, Plaintiffs’ counsel also deposed  
11 former Chief Information Security Officers (“CISO”) Justin Somaini, Alex Stamos, and Bob Lord;  
12 former incident response team leader and interim CISO Ramses Martinez; former penetration  
13 testing team leader Christopher Rohlf; and former Chief Information Officer (“CIO”) Jay Rossiter.  
14 (ECF No. 369-1 ¶ 9; ECF No. 369-16 ¶ 28). Further, at the time the original Agreement was  
15 reached, Plaintiffs had set deposition dates for former Yahoo Chief Executive Officer Marisa  
16 Mayer and former General Counsel Ronald Bell,<sup>10</sup> and were seeking dates for Yahoo co-founder,  
17 and former Board of Directors member, David Filo. (ECF No. 369-1 ¶ 15). Plaintiffs also  
18 propounded interrogatories, to which Defendants responded. (ECF No. 369-1 ¶ 13).

19         These efforts yielded an abundance of information upon which Plaintiffs’ expert  
20 cybersecurity team, led by Mary Frantz, relied on in forming opinions on why the Data Breaches  
21 occurred and how they could and should have been prevented.

22         In addition, eight of the nine named MDL Case Plaintiffs had their devices forensically  
23 imaged, search terms were applied and the documents containing the terms were reviewed and  
24 produced, if responsive and non-privileged; each responded to document requests and  
25

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26 <sup>9</sup> During this period, JCCP Class Counsel also entered into a Protective Order, ESI Order, and ESI  
27 search protocol, and engaged in numerous negotiations with Yahoo regarding the search terms that  
would be used in both the JCCP and the MDL action. (ECF No. 369-16 ¶¶ 23–25).

28 <sup>10</sup> These depositions were delayed after motions practice at the order of Judge Cousins. (ECF No.  
286).

1 interrogatories; and each was deposed. (ECF No. 369-1 ¶¶ 29). Plaintiffs also produced for  
2 deposition four expert witnesses—James Van Dyke, Mary Frantz, Ian Ratner, and Gary Parilis—  
3 each of whom previously produced reports. *Id.* ¶ 17.

4 With a well-developed record in hand, on July 13, 2018, MDL Class Counsel filed a motion  
5 for class certification (ECF No. 248). Defendants filed an opposition and three *Daubert* motions  
6 (ECF Nos. 295, 301–303).

7 Defendants challenged Plaintiffs’ ability to prove they were harmed by the cyberattacks,  
8 and that Yahoo’s actions caused that harm. Defendants asserted that Plaintiffs had no class-wide  
9 proof of those elements and that proving each would require potentially millions of mini-trials.  
10 Because the compromised UDB did not contain the type of information that would directly lead to  
11 the harms alleged, Defendants pointed out that Plaintiffs must rely on the information accessible  
12 in email content, which would necessarily vary from person to person. Defendants additionally  
13 challenged the methodologies set forth in Plaintiffs’ expert reports, asserting that, *inter alia*:  
14 Plaintiffs’ Lost Value of PII damages model was unreliable because fictitious information was  
15 sometimes provided in connection with Yahoo accounts and it is impossible to diminish the value  
16 of fake information; and Plaintiffs’ benefit-of-the-bargain hypothesis failed because Defendants  
17 maintained identical security measures for paid and free users, therefore Paid and Small Business  
18 Users lost no benefit of their bargains. Defendants also proffered their own experts relating to  
19 damages and the non-existent, or extremely brief, period of vulnerability for any named Plaintiffs’  
20 Personal Information on the Dark Web.

21 JCCP Counsel filed a motion for class certification on August 27, 2018, which was set for  
22 hearing on September 28, 2018. (ECF No. 369-16 ¶ 30).

#### 23 **D. Settlement Negotiations and Confirmatory Discovery**

24 On August 14 and September 7, 2018, MDL Class Counsel, JCCP Class Counsel, and  
25 Defendants engaged in arm’s-length, in-person, day-long mediation sessions under the direction  
26 of the Honorable Daniel Weinstein (Ret.), Jed Melnick, and Simone Lelchuk of JAMS  
27 (“Mediators”). In addition, between August 15 and September 7, 2018, counsel for Defendants  
28 and Plaintiffs engaged in multiple arms-length ongoing settlement negotiations. During the second

1 formal mediation session, the parties agreed to terms forming the substance of the original  
2 Settlement. Negotiations of attorneys' fees, costs, and expenses did not begin until agreement on  
3 behalf of the Settlement Class had been reached. S.A. § 12.1; (ECF No. 369-1 ¶ 20). Following  
4 this Court's Order denying the First Motion for Preliminary Approval, Lead Settlement Counsel  
5 and Defendants' counsel engaged in a series of settlement negotiation conversations, resulting in  
6 the Amended Settlement, which increased the cash fund and decreased the fee request (ECF No.  
7 369-1 ¶ 23; ECF No. 369-16 ¶ 34).

8 Confirmatory discovery, including depositions of Yahoo's Senior Principal Software  
9 Development Engineer, Dr. Edgar Whipple; its Product Manager of Audience Data Engineering,  
10 Jakub Slomczynski; and Verizon's current CISO, Christopher Nims regarding the declarations  
11 each submitted regarding the Amended Settlement Agreement (ECF Nos. 369-26–369-28) was  
12 pursued in April 2019. (ECF No. 369-1 ¶ 50); Declaration of John Yanchunis in Support of  
13 Plaintiffs' Motion for Attorneys' Fees, Costs, and Expenses and Service Awards, filed  
14 contemporaneously herewith, at ¶ 15 (hereinafter, "Yanchunis Dec."). These depositions explored  
15 the analyses used in computing class size and makeup, as well as the business practice changes  
16 Defendants committed to as part of the Settlement. Yanchunis Dec. ¶ 15.

17 Likewise, a revised Second Amended Complaint was proposed and permitted to be filed  
18 by the Court. (ECF No. 387; ECF No. 389).

## 19 **II. THE SETTLEMENT TERMS**

### 20 **A. Proposed Settlement Class**

21 The Amended Settlement Agreement provides relief for the following Class:

22 All U.S. and Israel residents and small businesses with Yahoo accounts at any time  
23 during the period of January 1, 2012 through December 31, 2016, inclusive;  
24 provided, however, that the following are excluded from the Settlement Class: (i)  
25 Defendants, (ii) any entity in which Defendants have a controlling interest, (iii)  
26 Defendants' officers, directors, legal representatives, successors, subsidiaries, and  
27 assigns; (iv) any judge, justice, or judicial officer presiding over this matter and the  
28 members of their immediate families and judicial staff; and (v) any individual who  
timely and validly opts-out from the Settlement Class.

S.A. § 1.43.

1           **B.       Business Practice Changes**

2           Enhanced and improved data security is a critical aspect of the Settlement. Yahoo has  
3 made, and continues to make, substantial enhancements, expenditures, and improvements to its  
4 security environment in response to *this* litigation. Specifically, upon acquisition by Verizon, an  
5 extraordinary “investment” budget was allocated to improve security headcount and build new  
6 security capabilities—over and above the already substantially increased yearly operational  
7 budget. (ECF No. 369-28 ¶ 4). This combined operations and investment budget from 2017 to  
8 2019 is \$234.7 million: \$28.7 million in 2017, \$98 million in 2018, and \$108 million currently  
9 allocated for 2019. (*Id.*). Yahoo also has committed to yearly information security budgets of at  
10 least \$66 million through 2022, some four times greater than Yahoo’s average information security  
11 budget from 2013-2016. (ECF No. 369-28 ¶ 4; ECF No. 369-4 ¶¶ 1-2).

12           Information security employee headcount—a recurrent issue at Yahoo during the period of  
13 the Breaches—has likewise vastly improved. The Yahoo Paranoid team headcount pre-acquisition  
14 in 2016 was approximately 48; by 2018, Oath had approximately 146 full-time employees  
15 dedicated to security. (ECF No. 369-28 ¶ 6). In addition, approximately 80 full-time consultants  
16 and contractors provided security services to Oath in 2018. *Id.* For 2019, Oath budgeted for a  
17 headcount of approximately 200 full-time employees dedicated to security, more than four times  
18 the security headcount at legacy Yahoo; and Defendants have committed to maintaining a  
19 headcount of 200 through 2022. (ECF No. 369-4 ¶ 2).

20           Oath has aligned its security program to the NIST Cybersecurity Framework, has  
21 undergone a maturity assessment against NIST in collaboration with a third-party, and has agreed  
22 to undergo such Third-Party assessments for four years beginning in 2019. (ECF No. 369-28 ¶¶  
23 17-18; ECF No. 369-4 ¶¶ 3, 7). Oath also implemented vulnerability management schedules,  
24 requiring S0 issues (the most critical), and S1 issues, amongst others, to be resolved on a set  
25 schedule. (ECF No. 369-28 ¶ 40); (ECF No. 369-4 ¶ 12). UDB access has been strictly limited,  
26 and intrusion detection has been added. (ECF No. 369-28 ¶¶ 27–30, 33–36).

27           Defendants have obtained enhanced intrusion and anomaly detection tools—industry  
28 standard tools that were lacking during the period of the Breaches. Defendants have also

1 implemented System Incident and Event Management (SIEM) along with other scanning and  
2 network visibility tools. (ECF No. 369-28 ¶¶ 37-39). With increased, and comprehensive,  
3 employee training; the maintenance of event logs for three years (two years longer than industry  
4 standard); as well as proactive penetration testing by the Red Team; and an external CISO board  
5 of advisors, (ECF No. 369-4 ¶¶ 4-5, 8, 16, 17); (ECF No. 369-28 ¶¶ 7-12, 19-25, 52), Plaintiffs’  
6 cybersecurity expert Mary Frantz has opined that the Business Practice Changes “adequately  
7 address the deficiencies [she] found within Legacy Yahoo’s information security environment.”  
8 (ECF No. 369-29 ¶ 35).

9         These measures directly relate to the inadequacies Plaintiffs identified during discovery  
10 and were made in “response to initiation of the litigation in this matter.” (ECF No. 369-4). For  
11 example, the class certification motion explained that Yahoo’s information security team was  
12 significantly understaffed and underfunded, Yahoo lacked intrusion detection systems and had  
13 inadequate logging, access to the UDB was liberally granted, and backup copies of the UDB were  
14 regularly created without encryption or auditing. Cert. Memo at 11–17.

### 15           **C. Settlement Fund**

16         The Settlement also requires Yahoo to pay \$117.5 million into a Settlement Fund. S.A.  
17 § 3.1. All remuneration—other than amounts related to the Business Practice Changes—will be  
18 drawn from this Fund, comprised of amounts: (a) to reimburse Settlement Class Members who  
19 have out-of-pocket losses; (b) to compensate Paid and Small Business Users up to 25% of the  
20 amounts they paid for Yahoo’s email services; (c) to pay Alternative Compensation to those  
21 already having credit monitoring; (d) for the costs of class notice and settlement administration;  
22 (e) to provide at least two years of Credit Monitoring Services; (f) for all attorneys’ fees, costs,  
23 and expenses; and (g) for Service Awards to Settlement Class Representatives. S.A. §§ 3.2, 4.8,  
24 5.3, 6.4, 6.5, 6.7, 10.3, 11.2, 12.2. In the event the Fund is insufficient, all cash-claims drawn from  
25 it—*i.e.*, Out-of-Pocket, Paid, and Small Business Users Costs, and Alternative Compensation—  
26 will be reduced *pro rata*. S.A. § 6.9.

#### 27                   **1. Out-of-Pocket Costs**

28

1 Out-of-Pocket Costs include “costs or expenditures that a Settlement Class Member  
2 actually incurred that are fairly traceable to one or more of the Data Breaches,” and

3 may include, without limitation: unreimbursed fraud losses or charges; professional  
4 fees incurred in connection with identity theft or falsified tax returns; fees or  
5 expenses incurred for, or as a result of, credit freezes; credit monitoring that was  
6 ordered after January 1, 2012 through the date on which the Credit Services become  
available through this Settlement Agreement; [and] miscellaneous expenses such  
as notary, fax, postage, copying, mileage, and long-distance telephone charges . . . .

7 S.A. § 1.29. For Small Business Users, Out-of-Pocket Costs may also include “wages or fees paid  
8 for the performance of tasks fairly traceable to mitigating the impact of one or more of the Data  
9 Breaches.” S.A. § 1.29.

10 Time spent remedying issues related to one or more of the Data Breaches is likewise  
11 compensable at the rate of “\$25.00 per hour or unpaid time off work at the actual hourly rate of  
12 that Settlement Class Member, whichever is greater,” and can include up to fifteen hours of time  
13 for Settlement Class Members with documented Out-of-Pocket Costs, and up to five hours at that  
14 same rate for Settlement Class Members with undocumented costs. S.A. § 1.29.

15 Claims can be submitted online via a single claim form, accompanied by an attestation  
16 regarding the expenditures incurred and basic documentation (*i.e.* letter from IRS if claiming IRS  
17 tax fraud expenses). S.A. §§ 6.1, 6.4; S.A. Ex. 6. Proof of causation is limited to establishing the  
18 costs are “fairly traceable” to the Data Breaches, meaning “(i) the Misconduct occurred in January  
19 2012 or thereafter; (ii) the Settlement Class Member states that he, she, or it believes the  
20 Misconduct is connected to one or more of the Data Breaches; and (iii) the Misconduct involved  
21 possible mis-use of the type of Personal Information accessed in one or more of the Data  
22 Breaches . . . .” S.A. § 6.3. Preventative measures, “such as obtaining credit monitoring services  
23 or credit freezes, shall be deemed fairly traceable to one or more of the Data Breaches if they were  
24 incurred in January 2012 or thereafter and the Settlement Class Member states that they believe  
25 the costs were incurred as a result of one or more of the Data Breaches.” S.A. § 6.3.

26 Out-of-Pocket Costs Claims can be submitted for 365 days after the Preliminary Approval  
27 Order. S.A. § 6.1. Hence, the deadline for claims is July 20, 2020. The Settlement Administrator  
28 is reviewing claims as they are submitted, and where a claim is deemed deficient, notifies the Class

1 Member within fifteen days of that determination. The Class Member then has 30 days to rectify  
2 the deficiency. S.A. § 6.2.

3 **2. Paid User and Small Business User Costs**

4 Paid Users are Settlement Class Members that paid for ad-free or premium email services  
5 during the Class Period. S.A. § 1.31. Small Business Users are Settlement Class Members that  
6 paid for Small Business services during the Class Period. S.A. § 1.48. Paid and Small Business  
7 Users can receive up to 25% of the total amounts paid per year by those users between January 1,  
8 2012 and December 31, 2016. S.A. §§ 6.5, 6.7. Small Business Users are subject to a cap of \$500  
9 per year. S.A. § 6.7.<sup>11</sup> Paid and Small Business Users need only submit online a Claim Form  
10 identifying the paid account(s) utilized, and the number of years during the Class Period it was  
11 used. S.A. §§ 6.6, 6.8, Ex's 8-9. Paid and Small Business Users remain eligible to submit claims  
12 for Out-of-Pocket Costs and for Credit Services or Alternative Compensation. S.A. §§ 6.5, 6.7.

13 **3. Alternative Compensation**

14 Settlement Class Members that already have credit monitoring protections are eligible for  
15 Alternative Compensation in the amount of \$100. S.A. §§ 5.1-5.3. Depending on participation, the  
16 dollar amount could rise or fall. To obtain, Settlement Class Members need only confirm the timing  
17 and type of credit monitoring services they already have, that they wish to receive Alternative  
18 Compensation instead of the Credit Monitoring Services, and that they will keep their current  
19 services active for at least one year. S.A. §§ 5.1, 5.2, Ex. 7.

20 **D. Credit Services**

21 Two years of credit monitoring and identity theft protection services from AllClear ID will  
22 also be provided from the Settlement Fund, at a cost \$24 million. S.A. § 4.1, 4.7. Importantly, the  
23 Credit Monitoring Services are not capped at any enrollment number; hence, if all 194 million  
24 Class Members enroll, all will be covered for \$24 million—shifting the risk of greater than  
25 historically anticipated enrollment to the vendor rather than the Settlement Fund. The Credit  
26

27 \_\_\_\_\_  
28 <sup>11</sup> This cap exceeds the amount any Small Business User paid for email services and impacts, if  
any, only those receiving the highest-level merchant solutions. (ECF No. 369-1 ¶ 49).

1 Services to be provided by AllClear ID will consist of: three-bureau credit monitoring;<sup>12</sup>  
 2 VantageScore® 3.0 Credit Score and Credit Report from TransUnion®; Fraud Alerts; ID Theft  
 3 Insurance up to a limit of \$1 million; Identity Theft Monitoring to notify Settlement Class  
 4 Members when stolen identity information has been detected and reported through the Internet  
 5 Fraud Alert system (Dark Web monitoring); Identity Restoration Services; Identity theft scan of  
 6 Settlement Class Members' minor children identities, up to the age of 18; and assistance with  
 7 canceling and replacing credit and debit cards if a wallet is lost or stolen. S.A. § 4.1. This  
 8 comprehensive credit-monitoring product is especially important here, where Yahoo has not  
 9 previously made credit monitoring available. Credit Services can be claimed via a straightforward  
 10 claim form. S.A. § 4.3, Ex. 7.

11 The Credit Services to be provided to the Settlement Class have a retail value of  
 12 \$14.95/month.<sup>13</sup> These services are important to protect Settlement Class Members from further  
 13 identity fraud and losses.

14 Because AllClear Credit Services, or any reasonable equivalent, are unavailable in Israel,  
 15 Israeli Settlement Class Members are eligible for Alternative Compensation without a showing of  
 16 current credit monitoring services. S.A. §§ 4.9, 5.4. The underlying U.S. resident, individual  
 17 owner(s) of Small Business Users are also eligible to claim Credit Services or Alternative  
 18 Compensation—Credit Services will apply in their individual capacity. S.A. § 4.10.

19 **E. Class Notice and Settlement Administration, Service Awards, and Fees**

20 Notice to the Settlement Class and the costs of administration are also funded by the  
 21 Settlement Fund at a cost of approximately \$6 million. S.A. § 10.3; (ECF No. 369-1 ¶ 23).  
 22 Likewise, Plaintiffs' concurrently filed Motion for Attorneys' Fees, Costs, and Expenses and  
 23 Service Awards, seeks Service Awards for all named plaintiffs, as well as an award of attorneys'  
 24 fees, litigation costs, and expenses, from the Settlement Fund. S.A. §§ 1.45, 11.1–11.2, 12.1–12.2.

26 <sup>12</sup> Single bureau monitoring with TransUnion is activated at the time of enrollment. Members will  
 27 have to login to their online customer portal or call the support center to accept the filtering policy  
 to activate triple bureau credit monitoring.

28 <sup>13</sup> Declaration of AllClear ID at ¶ 5, filed previously at ECF No. 369-25 (hereinafter "AllClear  
 Dec.").



1           **F.       Reduction or Residual**

2           If the Settlement Fund is insufficient to cover all Out-of-Pocket Costs, Paid User Costs,  
3 Small Business User Costs, and Alternative Compensation payments, all such cash claims will be  
4 reduced on a *pro rata* basis. S.A. § 6.9. Conversely, should there be a residue, surplus funds will  
5 first be used to increase the Alternative Compensation payments up to the \$358.80 individual cap,  
6 (S.A. § 7.1(a))—the full retail value of two years of the Credit Services. AllClear Dec., ¶ 5. Next,  
7 residual funds will be used to purchase additional months of Credit Monitoring Services, in  
8 monthly installments, until insufficient funds remain to purchase an additional month. S.A.  
9 § 7.1(b). If additional funds remain following those two steps, then the parties will motion the  
10 Court for distribution to *cy pres* recipient Electronic Privacy Information Center. S.A. § 7.1(c).

11           **G.       Release**

12           In exchange for the benefits provided under the Settlement Agreement, Settlement Class  
13 Members will release any and all claims against Defendants related to or arising from any of the  
14 facts alleged in the complaints filed in this litigation. S.A. §§ 1.39, 13.1-13.4.<sup>14</sup>

15           **III.   NOTICE IMPLEMENTATION**

16           Pursuant to the Preliminary Approval Order, Settlement Administrator Heffler  
17 implemented the Notice Program. Combined, the direct email notice and notice via media,  
18 including print, press releases, and more than 320 million online and social impressions, reached  
19 81 percent of the target audience in the United States, with an average frequency of approximately  
20 3.2 times and over 77 percent of the target audience in Israel with an average frequency of  
21 approximately 3 times; meeting, or exceeding, the expectations for the Plan. *See* Finegan Decl.  
22 ¶ 4, n.2; (ECF No. 369-6 ¶ 4) (anticipating 80% reach rate, with frequency of three times).

23           Specifically, as anticipated, direct notice was achieved through email. The email campaign  
24 began on September 3, 2019, with approximately 24.5 million emails sent. The email campaign  
25 continued for the next 19 business days and ended on September 30, 2019. A total of 942,628,667  
26 emails were attempted for delivery to Class Member email addresses on file, with 204,906,633

27 \_\_\_\_\_  
28 <sup>14</sup> In MDL proceedings, it is proper to release claims based on facts alleged in the underlying MDL  
complaints. *See, e.g., In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 327 (N.D. Cal. 2018).

1 emails successfully delivered, a figure in line with Dr. Whipple’s analysis. Finegan Decl. ¶ 11. A  
2 second round of email notice is also underway, having commenced on January 27, 2020, and to be  
3 completed on February 9, 2020, which will increase the delivered U.S. frequency to 3.5 times and  
4 Israeli frequency to 3.2 times. *Id.* ¶ 3, 3 n.1. Publication Notice was published once in *People*  
5 *Magazine*<sup>15</sup> on September 13, 2019; and once in *National Geographic*<sup>16</sup> on September 24, 2019.  
6 *Id.* ¶ 13–14. Publication Notice was also distributed in multiple Israeli publications, in various  
7 languages, throughout September 2019. *Id.* ¶¶ 16–28.

8 Online display and search advertisements, as well as social media, were also leveraged  
9 here, resulting in 57 million display and search impressions and 272 million social media  
10 impressions. *Id.* ¶¶ 29-36.

11 Press Releases were issued in English and Spanish over PR Newswire’s US1 Newslines  
12 and National Hispanic Newslines on September 3, 2019. Additionally, a news release was issued  
13 in English and Hebrew over PR Newswire’s Israel Newslines on September 3, 2019. Some 276  
14 news outlets published the releases, with a total potential audience of 66,485,101. *Id.* ¶¶ 38-41.

15 Heffler also created and is currently hosting a dedicated website entitled  
16 [www.YahooDataBreachSettlement.com](http://www.YahooDataBreachSettlement.com). The website in its entirety was also built in both Spanish  
17 and Hebrew. The website went live on August 30, 2019, and, as of January 27, 2020, it had  
18 4,406,667 unique visitors. The website versions contain a summary of the Settlement, frequently  
19 asked questions, various Court documents (*e.g.*, the Settlement Agreement, Preliminary Approval  
20 Order, Complaints, declarations, etc.), Long Form Notice, Claim Forms (Account Holder Form,  
21 Paid User Form, Small Business Form and Israeli Claim Form) information on the claim  
22 filing/exclusion/objection deadlines, and allows Class Members an opportunity to file a Claim  
23 Form online through the claims filing deadline of July 20, 2020. The Long Form Notice and all  
24 versions of the Claim Forms were published in English, Spanish, Russian, Hebrew, and Arabic.  
25 In addition, Heffler coordinated the translation of the Settlement into Spanish, Russian, Hebrew  
26

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27 <sup>15</sup> *People Magazine* has a weekly circulation of 3,031,000. Finegan Decl. ¶ 13.

28 <sup>16</sup> *National Geographic* has a monthly circulation of 2,648,000. Finegan Decl. ¶ 14.

1 and Arabic, which were all posted on the website. The website also provided informational and  
2 instructional videos about how to file the various Claim Forms for Class Members to view. Heffler  
3 coordinated the creation and translation of the videos with United Language Group. The videos  
4 for the Account Holder Form, the Paid User Form, the Small Business User Form and Israeli Form  
5 were all developed in English, Spanish, Russian, Hebrew and Arabic and posted to all versions of  
6 the website. *Id.* ¶ 42.

7 Heffler also established a toll-free number, 1-844-702-2788, for Class Members to call and  
8 obtain additional information regarding the Settlement through an Interactive Voice Response  
9 (“IVR”) system and/or by being connected to a live agent. Heffler likewise established an Israeli  
10 number of 1-80-9344112 for Israeli residents to call the IVR or speak to an agent about the  
11 Settlement. As of January 27, 2020, Heffler has received 17,578 calls through the toll-free number  
12 and 8,833 calls through the Israeli line. Heffler worked with United Language Group to have the  
13 IVR scripting developed and recorded in English, Spanish, Russian, Hebrew and Arabic. *Id.* ¶ 43.

14 In sum, the multi-media channel notice program developed and deployed for this  
15 Settlement was robust and far-reaching.

#### 16 **IV. CLASS REACTION**

17 The Class’s response to the Settlement has been positive. As of January 27, 2019, more  
18 than 819,000 claims have been filed, Finegan Decl. ¶ 46, with nearly six months of the Claims  
19 Period still remaining, far outpacing claims totals seen in *Target* and *Home Depot*,<sup>17</sup> and  
20 comparable to that seen in *Anthem*.<sup>18</sup> While the deadline to request exclusion from, or object to,  
21 the Settlement is not until March 6, 2020, as of January 27, 2020, Heffler has received only 224  
22 requests for exclusion from the Settlement Class and 10 objections. Finegan Decl. ¶¶ 44-45. This  
23 represents a miniscule opt-out rate of 0.000001%; further supporting approval. *See, e.g., In re*

24  
25 <sup>17</sup> *See* (ECF No. 369-31 at 2) (noting claims in *Target* of 127,527 three months prior to deadline  
and 225,856 total claims in *Home Depot*).

26 <sup>18</sup> *See In re Anthem, Inc. Data Breach Litig.*, 15-MD-02617-LHK, ECF No. 916-32 ¶ 21 (N.D.  
27 Cal.) (noting 891,431 Credit Monitoring Claims Forms and 106,417 Alternative Compensation  
28 Claim Forms received approximately two months prior to claims deadline); *In re Anthem, Inc.*  
*Data Breach Litig.*, 327 F.R.D. at 329 (noting 1.41 million total claims were filed).

1 *Anthem*, 327 F.R.D. at 320–21 (“[O]nly 406 Settlement Class Members have opted out of the  
2 Settlement (about 0.0005% of the Class). Such low rates of objections and opt-outs are ‘indicia of  
3 the approval of the class.’”) (citations omitted) (quoting *Hughes v. Microsoft Corp.*, No. 98-CV-  
4 01646, 2001 WL 34089697, at \*1, \*8 (W.D. Wash. Mar. 26, 2001)).

5 Because claims continue to be filed, with Heffler’s processing and validation process  
6 ongoing, a more detailed claims report on claims amounts will be provided following the exclusion  
7 and objection deadline. Finegan Decl. ¶ 46.

## 8 **V. ARGUMENT**

### 9 **A. The Settlement Class Should Be Finally Certified**

10 Before assessing the parties’ settlement, the Court should first confirm that the underlying  
11 settlement class meets the requirements of Rule 23. See *Amchem Prods. v. Windsor*, 521 U.S.  
12 591,620 (1997); Manual for Complex Litigation, § 21.632. The requirements are well known:  
13 numerosity, commonality, typicality, and adequacy—each of which is met here. Fed. R. Civ. P.  
14 23(a); *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 979-80 (9th Cir. 2011).

#### 15 **1. The Rule 23(a) Requirements Are Met**

16 The Settlement Class includes 896 million accounts, representing some approximately 194  
17 million individuals and small businesses, and readily satisfies the numerosity requirement. See  
18 Fed. R. Civ. P. 23(a)(1). The commonality requirement, which requires that class members’ claims  
19 “depend upon a common contention,” of such a nature that “determination of its truth or falsity  
20 will resolve an issue that is central to the validity of each [claim] in one stroke,” is also met. *Wal-*  
21 *Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Here, Plaintiffs’ claims turn on whether  
22 Yahoo’s security environment was adequate to protect Settlement Class members’ Personal  
23 Information. Cert. Memo at 22-23. The resolution of that inquiry revolves around evidence that  
24 does not vary from class member to class member, and so can be fairly resolved—whether through  
25 litigation or settlement—for all class members at once.

26 Likewise, typicality and adequacy are satisfied. Each proposed Settlement Class  
27 Representative alleges he or she was a Yahoo user, with Personal Information stored on the UDB,  
28 that was exfiltrated during the Data Breaches, and thus they were impacted by the same inadequate

1 data security that Plaintiffs allege harmed the rest of the Class. Cert. Memo at 23–25; *Just Film,*  
2 *Inc. v. Buono*, 847 F.3d 1108, 1118 (9th Cir. 2017) (“[I]t is sufficient for typicality if the plaintiff  
3 endured a course of conduct directed against the class.”). The Settlement Class Representatives  
4 also have no conflicts with the Settlement Class; have participated actively in the case, including  
5 by sitting for depositions and allowing their devices to be examined; and are represented by  
6 experienced attorneys who were previously appointed by this Court—or the JCCP Court—to  
7 represent the Settlement Class members’ interests. See Cert. Memo at 26; *Staton v. Boeing Co.*,  
8 327 F.3d 938, 957 (9th Cir. 2003) (adequacy satisfied if plaintiffs and their counsel lack conflicts  
9 of interest and are willing to prosecute the action vigorously on behalf of the class); (ECF No. 369-  
10 ¶¶ 16, 29–30, 38–39); (ECF No. 369-16 ¶¶ 2–5, 34–36).

## 11 **2. The Requirements of Rule 23(b) Are Met**

12 “In addition to meeting the conditions imposed by Rule 23(a), the parties seeking class  
13 certification must also show that the action is maintainable under Fed. R. Civ. P. 23(b)(1), (2) or  
14 (3).” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1022 (9th Cir. 1998). Here, the Settlement Class  
15 is maintainable under Rule 23(b)(3), as common questions predominate over any questions  
16 affecting only individual members and class resolution is superior to other available methods for  
17 a fair and efficient resolution of the controversy. *Id.* Plaintiffs’ claims depend, first and foremost,  
18 on whether Yahoo used reasonable data security to protect their Personal Information. Cert. Memo  
19 at 22, 31–33. That question can be resolved using the same evidence for all Settlement Class  
20 Members, and thus is the precise type of predominant question that makes a class-wide  
21 adjudication worthwhile. See *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016)  
22 (“When ‘one or more of the central issues in the action are common to the class and can be said to  
23 predominate, the action may be considered proper under Rule 23(b)(3) ...”).

24 Importantly, predominance analysis in the settlement context need not consider  
25 manageability issues because “the proposal is that there be no trial,” and hence manageability  
26 considerations are no hurdle to certification for purposes of settlement. *Amchem*, 521 U.S. at 620.  
27 There is only the predominant issue of whether Yahoo failed to properly secure the Personal  
28 Information taken from it in the Data Breaches and failed to provide timely notice, such that its

1 users should now be provided a remedy. Resolution of that issue through individual actions is  
2 impracticable: the amount in dispute for individual class members is too small, the technical issues  
3 involved are too complex, and the required expert testimony and document review are too costly.  
4 *See Just Film*, 847 F.3d 1108 at 1123. Rather, the class device is the superior method of  
5 adjudicating consumer claims arising from these Data Breaches—just as in other data breach cases  
6 where class-wide settlements have been approved. *See, e.g., In re Anthem, Inc. Data Breach Litig.*,  
7 15-MD-02617-LHK, 2018 WL 3872788, at \*11 (N.D. Cal. Aug. 15, 2018); *In re LinkedIn User*  
8 *Privacy Litig.*, 309 F.R.D. 573, 585 (N.D. Cal. 2015).

9 **B. The Settlement Should be Finally Approved**

10 **1. Rule 23(e) Analysis**

11 Amended Rule 23(e) standardizes the factors governing final approval, stating that  
12 approval is proper upon a finding that the settlement is “fair, reasonable, and adequate” after  
13 considering whether:

- 14 (A) the class representatives and class counsel have adequately represented  
15 the class;
- 16 (B) the proposal was negotiated at arm’s length;
- 17 (C) the relief provided for the class is adequate, taking into account:
- 18 (i) the costs, risks, and delay of trial and appeal;
- 19 (ii) the effectiveness of any proposed method of distributing relief to  
20 the class, including the method of processing class-member claims;
- 21 (iii) the terms of any proposed award of attorney’s fees, including  
22 timing of payment; and
- 23 (iv) any agreement required to be identified under Rule 23(e)(3); and
- 24 (D) the proposal treats class members equitably relative to each other.

25 Fed. R. Civ. P. 23(e).

26 The applicable standard for preliminary approval also now incorporates these factors,  
27 which Plaintiffs analyzed at the preliminary-approval stage, along with the Northern District of  
28 California’s Procedural Guidance for Class Action Settlements’ multiple applicable criteria for  
preliminary approval and this Circuit’s factors for final approval, (ECF No. 369 at 23–39).  
Accordingly, Plaintiffs incorporate all of that argument and analysis by this reference. To avoid

1 further burdening the record, Plaintiffs recap highlights of those arguments below and address any  
2 new matters evolving since that filing.

3 As previously established, Settlement Class Representatives and Settlement Class Counsel  
4 have adequately represented the Class. *See* (ECF No. 369 at 22, 24). The original settlement was  
5 negotiated at arm's length using a team of experienced neutrals, and the Amended Settlement was  
6 renegotiated by Lead Settlement Counsel and Yahoo's counsel over the course of several weeks,  
7 all of which communications were at arm's length. *See (Id. at 13-14)*. Class Counsel then took  
8 confirmatory depositions of Dr. Whipple, Mr. Slomczynski, and Christopher Nims. Yanchunis  
9 Dec. ¶ 15.

10 **a) Adequacy of Relief: Costs, Risks, and Delay**

11 The relief provided by the Settlement is reasonable and adequate, particularly in light of  
12 the risks and delay trial and associated appeals would wreak. At bottom, Plaintiffs built a strong  
13 case for liability, but the real issue, the real risk in the case, was the viability of Plaintiffs' damages  
14 models and concomitant ability to certify a damages class using them.

15 Fundamentally, the Gordian knot of this case was the extreme variability in potentially  
16 impacted Personal Information for any particular Class Member. Generally, data breach cases  
17 involve the pilfering of types of data that are both known and uniform across the class. For  
18 example, in *Anthem*, it was alleged that personal information such as names, dates of birth, Social  
19 Security numbers, and health care ID numbers, was stored by defendants for each class member  
20 and taken by the attackers. *In re Anthem, Inc. Data Breach Litig.*, 162 F. Supp. 3d 953, 966 (N.D.  
21 Cal. 2016). In payment card cases, such as *Home Depot* or *Target*, the data taken is almost always  
22 constant for all class members: payment card numbers, expiration dates, card verification values,  
23 and cardholder names.

24 Here, such uniformity is not present. Certainly, some impacted data was fixed for each  
25 impacted account: email addresses, passwords, security questions and answers (for some  
26 accounts), as well as telephone numbers and birth dates, if provided and accurate. Spring-boarding  
27 from that information, specifically the username and passwords, Plaintiffs alleged that fraudsters  
28 could then (and did, in some circumstances) gain access to Class Members' email accounts, the

1 contents of which could contain the most sensitive and dangerous information from an identity  
 2 theft perspective; including financial communications and records containing credit cards, banking  
 3 information, other account passwords, IRS documents, and social security numbers. *E.g.*, SAC ¶ 7.  
 4 Hence, the types of especially sensitive information at issue for any particular Class Member  
 5 necessarily varied based on the contents of their email account. And the need to access email (or  
 6 other account) content also adds an additional significant link in the causal chain.

7 Defendants argued that Plaintiffs had not presented any viable method for determining on  
 8 a class-wide basis whether: (1) a class member had even provided “PII” to Yahoo (or sent PII  
 9 through his or her Yahoo email account), (2) what PII there was, (3) whether it had value, (4)  
 10 whether that value has since diminished, and (5) if so, whether Yahoo caused that loss in value.  
 11 Yahoo disputed Plaintiffs’ experts’ hypothetical “average” user methodology as at odds with the  
 12 evidence from the named Plaintiffs showing significant variability even in the limited data stored  
 13 in Yahoo’s user database. Through depositions and data analysis, Defendants were able to  
 14 determine that UDB information was often missing, out of date, or inaccurate (and Yahoo did not  
 15 independently verify the accuracy of what its users entered).

16 While liability facts in this matter have always been strong, in Plaintiffs’ view, the viability  
 17 of any damages model, and certifiability of any damages class based on the model, was inversely  
 18 uncertain.

19 This Settlement provides a fair and just mechanism for relief to the Class. It is certain and  
 20 provides long overdue monetary and non-monetary compensation. The Settlement compares  
 21 favorably in nearly every pertinent way to that approved by this Court in *Anthem*, 327 F.R.D. at  
 22 318-19, as shown below:

	Yahoo UDB	Yahoo Mail	Anthem
Class Size	≤ 200 million	≤ 100 million	79 million
PII compromised (excl. SSN)	Yes	Yes	Yes
SSN compromised	No	Possibly, if in email content	Yes



PHI compromised	No	Possibly, if in email content	Yes
Total Common Fund	\$117,500,000.00		\$115,000,000
Common Fund Available Minus Notice/Administration	\$111,500,000		\$92,000,000
Credit Monitoring Costs	\$24,000,000		\$17,000,000
Individual claim cap	\$25,000		\$10,000
Lost Time: Rate	\$25/hour or actual hourly rate		\$15/hour or actual hourly rate
Lost Time: Hours	15 hours for documented time 5 hours for undocumented		10 hours, above which required "a detailed showing"
Alternative Compensation	\$100, up to \$358.80		\$36, up to \$50
CISO Advisory Board	Yes		No
Security Commitment	4 years		3 years
Outside Assessment shared with Lead Plaintiff Counsel/Expert	Yes		Yes
Security Spend	4x prior levels		3x prior levels
Security Headcount Commitment	3x prior levels		3x prior levels

**b) Adequacy of Relief: Proposed Method of Distributing Relief**

Relief will be distributed to the Class following submission of claim forms on which Class Members will identify any Out-of-Pocket Costs they have incurred, provide the necessary information for obtaining Credit Monitoring Services (or opt for Alternative Compensation), or establish Paid User or Small Business User costs. This claim form method recognizes the inherent variability of out-of-pocket damages from identity theft, as well as the need for additional identifying information in order to initiate Credit Monitoring Services. Claims forms are also necessary in order to grapple with the issue of identifying actual class members—while impacted accounts are readily ascertainable, drilling down to impacted individual persons, and providing those individuals with monetary or other relief, is less straightforward. The claim forms will thus permit the Settlement Administrator to marry account data to individual Class Members.

1 Class Members may submit claim forms for every type of relief for up to 365 days  
2 following preliminary approval. The process for notifying the Class was robust and far-reaching,  
3 and more than met the dictates of due process.

4 **c) Adequacy of Relief: Attorneys' Fees**

5 Plaintiffs are concurrently seeking an award of attorneys' fees, litigation costs, and  
6 expenses, as well as Class Representative Service Awards, from the Settlement Fund, as further  
7 explained in that motion.

8 **d) Rule 23(e)(3) Agreements and Equality of Treatment**

9 No Rule 23(e)(3) agreements are in place in this matter.

10 The Settlement treats class members equitably relative to each other. All Class Members  
11 are eligible for reimbursement of Out-of-Pocket Costs and Credit Monitoring Services (or  
12 Alternative Compensation). Class Members who paid for Yahoo services—Paid Users and Small  
13 Business Users—will receive reimbursement of a portion of their payments to account for their  
14 lost benefit of the bargain. Because Credit Services are unavailable in Israel, Israeli Class Members  
15 may opt for Alternative Compensation without showing they have credit monitoring.

16 **2. The District's Procedural Guidance Regarding Final Approval**

17 The Northern District of California's Procedural Guidance for Class Action Settlements  
18 directs that, a motion for final approval should include:

19 information about the number of undeliverable class notices and  
20 claim packets, the number of class members who submitted valid  
21 claims, the number of class members who elected to opt out of the  
22 class, and the number of class members who objected to or  
commented on the settlement. In addition, the motion for final  
approval should respond to any objections.

23 N.D. Cal., *Procedural Guidance for Class Action Settlements* (Dec. 5, 2018) (hereinafter "District  
24 Guidance"). As set forth above, notice reached some 81% of the Class, with only 224 exclusions  
25 and 10 objections. Given that the exclusion and objection deadline is still forthcoming, and because  
26 the Preliminary Approval Order directed this motion be filed before that deadline but did not  
27 otherwise set a briefing schedule related to such objections, Plaintiffs propose that they file  
28 responses to any such objections, due March 19, 2020—thirteen days after the objection deadline,

1 and fourteen days prior to the Final Approval Hearing on April 2, 2020.

2 **3. Ninth Circuit Final Approval Factors**

3 Amended Rule 23 and the District Guidance reflect many of the factors already used in this  
4 Circuit for final approval: (1) the strength of the plaintiff's case; (2) the risk, expense, complexity,  
5 and likely duration of further litigation; (3) the risk of maintaining class action status throughout  
6 the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage  
7 of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental  
8 participant; (8) the reaction of the class members to the proposed settlement; and (9) whether the  
9 settlement is a product of collusion among the parties. *In re Bluetooth Headset Products Liab.*  
10 *Litig.*, 654 F.3d 935, 946 (9th Cir. 2011). Because only factors (5), (7), and (8) have the potential  
11 for evolution since the preliminary approval stage, with all others being previously addressed, they  
12 are further detailed below, with Plaintiffs' prior argument incorporated by reference.

13 **a) The Extent of Discovery Completed and the Stage of Proceedings**

14 In addition to the efforts described in the preliminary approval motion (ECF No. 369),  
15 during and following re-negotiation of the settlement, Plaintiffs took additional discovery to  
16 confirm the fairness of the proposed Settlement, including depositions of Yahoo's Senior Principal  
17 Software Development Engineer, Dr. Edgar Whipple; its Product Manager of Audience Data  
18 Engineering, Jakub Slomczynski; and Verizon's current CISO, Christopher Nims regarding the  
19 declarations each submitted regarding the Amended Settlement Agreement (ECF Nos. 369-26–  
20 369-28) in April 2019. (ECF No. 369-1 ¶ 50); Yanchunis Dec. ¶ 15. These depositions explored  
21 the analyses used in computing class size and makeup, as well as the business practice changes  
22 Defendants committed to as part of the Settlement. Yanchunis Dec. ¶ 15. This discovery probed  
23 the bases and conclusions reached in the declarations, and further buttressed the resolution reached  
24 here.

25 **b) The Presence of a Government Participant**

26 Pursuant to the Notice Plan, the Attorney General of the United States, and the 51 Attorneys  
27 General as well as to 5 territories were notified pursuant to CAFA, 28 U.S.C. § 1715, and given  
28 an opportunity to raise any objections. Currently, no such objections have been received.

1                                    **c) The Reaction of the Class Members to the Proposed**  
 2                                    **Settlement**

3                                    As described above, the reaction of the Class has been positive, with more than 819,000  
 4                                    claims having been filed, only 224 requests for exclusion, and 10 objections to date. Finegan Decl.  
 5                                    ¶¶ 44-46.

6                                    **C. The Notice Plan Met the Requirements of Due Process**

7                                    In any proceeding that is to be accorded finality, due process requires that interested parties  
 8                                    be provided with notice reasonably calculated, under the circumstances, to apprise them of the  
 9                                    pendency of the action and afford them an opportunity to present their objections. *Mullane v.*  
 10                                    *Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). That means the settlement notices  
 11                                    must fairly apprise the class members of the terms of the proposed compromise and give class  
 12                                    members sufficient information to decide whether they should accept the benefits offered, opt out  
 13                                    and pursue their own remedies, or object to the settlement. *Id.* Additionally, the notice must be  
 14                                    designed to have a reasonable chance of reaching a substantial percentage of the class members.  
 15                                    *Id.* at 318 (explaining notice must be reasonably calculated to reach interested parties).

16                                    For classes certified under Rule 23(b)(3), “the court must direct to class members the best  
 17                                    notice that is practicable under the circumstances, including individual notice to all members who  
 18                                    can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). Under amended Rule  
 19                                    23(c)(2)(B), “[t]he notice may be by one or more of the following: United States mail, electronic  
 20                                    means, or other appropriate means.” Fed. R. Civ. P. 23(c)(2)(B) (effective Dec. 1, 2018).

21                                    Here, as explained above, the Notice Plan was implemented as anticipated, reaching 81  
 22                                    percent of the target audience in the United States, with an average frequency of approximately  
 23                                    3.2 times and reaching over 77 percent of the target audience in Israel with an average frequency  
 24                                    of approximately 3 times, with frequencies set to increase. Finegan Decl. ¶ 3, 3 n.1.<sup>19</sup> Accordingly,  
 25                                    the Court should find the Notice Plan was reasonably calculated to give actual notice to Settlement

26 \_\_\_\_\_  
 27 <sup>19</sup> Exemplars of all applicable notices, claims forms, newspaper tear sheets, online display notices,  
 28 social media display notices, and press releases are attached the Finegan Declaration as its exhibits  
 A through FF.

1 Class Members of the right to receive benefits from the Settlement, and to be excluded from or  
2 object to the Settlement and that the Notice Plan met the requirements of Rule 23 and due process.

3 **D. Final Appointment of Settlement Class Counsel**

4 Under Rule 23, “a court that certifies a class must appoint class counsel . . . [who] must  
5 fairly and adequately represent the interests of the class.” Fed. R. Civ. P. 23(g)(1)(B). In making  
6 this determination, courts generally consider the following: (1) the proposed class counsel's work  
7 in identifying or investigating potential claims, (2) the proposed class counsel’s experience in  
8 handling class actions or other complex litigation, and the types of claims asserted in the case, (3)  
9 the proposed class counsel's knowledge of the applicable law, and (4) the proposed class counsel’s  
10 resources committed to representing the class. Fed. R. Civ. P. 23(g)(1)(A)(i-iv).

11 Here, proposed Settlement Class Counsel have extensive experience prosecuting class  
12 action cases, and specifically data breach cases, and were previously appointment by this Court,  
13 or by the JCCP Court. *See* (ECF No. 369-1 ¶¶ 39-40); (ECF No. 369-16 ¶¶ 2-5). Accordingly, the  
14 Court should appoint John Yanchunis, Gayle Blatt, Stuart Davidson, Karen Hanson Riebel, Ariana  
15 Tadler, and Daniel S. Robinson as Settlement Class Counsel.

16 **VI. CONCLUSION**

17 For the foregoing reasons, Plaintiffs respectfully request that the Court grant this motion  
18 for final approval; find the Settlement fair, reasonable, and adequate under Rule 23(e), finally  
19 certify the Settlement Class; finally appoint the Settlement Class Representatives; finally appoint  
20 Settlement Class Counsel, and find that the Notice Program satisfied Rule 23 and due process.

21 DATED: January 31, 2020

Respectfully submitted,

22  
23 MORGAN & MORGAN  
COMPLEX LITIGATION GROUP  
John A. Yanchunis

24  
25 \_\_\_\_\_  
s/  
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CERTIFICATE OF SERVICE

I hereby certify that on January 31, 2020, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed January 31, 2020.

/s/ John A. Yanchunis  
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