MORGAN & MORGAN
COMPLEX LITIGATION GROUP
John A. Yanchunis (Admitted *Pro Hac Vice*)
201 N. Franklin Street, 7th Floor
Tampa, FL 33602
Telephone: 813/223-5505
jyanchunis@ForThePeople.com

ROBBINS GELLER RUDMAN
& DOWD LLP
Stuart A. Davidson (Admitted *Pro Hac Vice*)
120 East Palmetto Park Road, Suite 500
Boca Raton, FL 33432
Telephone: 561/750-3000
sdavidson@rgrdlaw.com

CASEY GERRY SCHENK FRANCAVILLA
BLATT & PENFIELD LLP
Gayle M. Blatt (122048)
110 Laurel Street
San Diego, CA 92101
Telephone: 619/238-1811
gmb@cglaw.com

TADLER LAW LLP
Ariana J. Tadler (Admitted *Pro Hac Vice*)
One Pennsylvania Plaza, 36th Floor
New York, NY 10119
Telephone: 212/946-9300
atadler@tadlerlaw.com

LOCKRIDGE GRINDAL NAUEN P.L.L.P.
Karen Hanson Riebel (Admitted *Pro Hac Vice*)
100 Washington Ave. South, Suite 2200
Minneapolis, MN 55401
Telephone: 612/339-6900
khriebel@locklaw.com

ROBINSON CALCAGNIE, INC.
Daniel S. Robinson (244245)
19 Corporate Plaza Dr.
Newport Beach, CA 92660
Telephone: 949/720-1288
drobinson@robinsonfirm.com

Attorneys for Plaintiffs and Proposed Settlement Class Counsel

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION

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

No. 16-md-02752-LHK

PLAINTIFFS' OMNIBUS RESPONSE IN OPPOSITION TO OBJECTIONS TO PROPOSED SETTLEMENT

Date: April 9, 2020
Time: 1:30 pm
Courtroom: 8, 4th Floor
Judge: Hon. Lucy H. Koh

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Pursuant to the Court's Order Granting Plaintiffs' Administrative Motion Seeking Objection Briefing Schedule [ECF No. 419], and in further support of Plaintiffs' (1) Motion for Final Approval of Class Action Settlement [ECF No. 413], and (2) Motion for Attorneys' Fees, Costs, Expenses, and Service Awards [ECF No. 415], Plaintiffs and proposed Class Representatives ("Plaintiffs"), respectfully submit this Omnibus Response in opposition to each objection ("Objection," collectively, "Objections") to the proposed Settlement. Along with the Declaration of Stuart A. Davidson in Support of Plaintiffs' Response ("Davidson Decl.") (attached hereto as **Exhibit 1**), Plaintiffs state the following:

I. INTRODUCTION

As of the date of this filing, a total of 32 Class members have objected to the proposed Settlement, and 1,778 Class members have opted-out.[1] This represents, respectively, only .00000016 and .00000916 of the entire Class. Moreover, all State Attorneys General received statutory notice of the proposed Settlement under the Class Action Fairness Act, 28 U.S.C. §1715(b), and none has objected. Especially in light of the Class' significant size, the *de miminis* number of objections to the Settlement speaks in favor of the Settlement. *See, e.g.*, *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 577 (9th Cir. 2004) (affirming district court's approval of settlement where 45 of 90,000 class members objected to the settlement);[2] *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998) ("[T]he fact that the overwhelming majority of the class willingly approved the offer and stayed in the class presents at least some objective positive commentary as to its fairness."); *see also In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 320 (N.D. Cal. 2018) ("[O]nly 406 Settlement Class Members have opted out of the Settlement (about 0.0005% of the Class). Such low rates of objections and opt-outs are "indicia of the approval of the class."), *appeal dismissed sub nom. In re Anthem, Inc., Customer Data Sec. Breach Litig.*, No. 18-16866, 2018 WL 7890391 (9th Cir. Oct. 15, 2018), *and appeal dismissed sub nom.*

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[1] One attorney, Jeffrey Wilens of Lakeshore Law Center (https://www.lakeshorelaw.org/), reported – on the eve of the opt-out deadline – that 1,287 Yahoo account holders have retained him and chosen to opt out.

[2] Citations, internal quotations, and footnotes omitted and emphasis added unless otherwise noted.

In re Anthem, Inc., Customer Data Sec. Breach Litig., No. 18-16826, 2018 WL 7858371 (9th Cir. Oct. 17, 2018); *Van Lith v. iHeartMedia + Entm't, Inc.*, No. 1:16-cv-00066-SKO, 2017 WL 4340337, at *14 (E.D. Cal. Sept. 29, 2017) ("Indeed, it is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class action settlement are favorable to the class members."); *Low v. Trump Univ., LLC*, 246 F. Supp. 3d 1295, 1304 (S.D. Cal. 2017) (one objection from 8,253 class members supports fairness, adequacy, and reasonableness of settlement), *aff'd*, 881 F.3d 1111 (9th Cir. 2018); *In re Linkedin User Privacy Litig.*, 309 F.R.D. 573, 589 (N.D. Cal. 2015) ("A low number of opt-outs and objections in comparison to class size is typically a factor that supports settlement approval.");*Cruz v. Sky Chefs, Inc.*, No. C-12-02705 DMR, 2014 WL 7247065, at *5 (N.D. Cal. Dec. 19, 2014) ("A court may appropriately infer that a class action settlement is fair, adequate, and reasonable when few class members object to it."); *Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010) (approving class settlement with opt-out rate of 4.68% given that absence of negative reaction strongly supports settlement); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008) ("The Court received objections from only 3 out of 57,630 potential Class Members who received the notice. By any standard, the lack of objection of the Class Members favors approval of the Settlement.").

In a Settlement Class with as many as 194 million members, including citizens of Israel, only 32 have objected.[3] Many of the Objections, including a small number of serial objectors, aggregate toward three central themes: that Yahoo is not paying enough, that credit monitoring is worthless, or that Class Counsel's fee request is too big. None of the Objections has merit.

At bottom, the immediate issue before this Court under Rule 23(e) of the Federal Rules of Civil Procedure is whether the proposed Settlement is fair, reasonable, and adequate to resolve the claims of a United States and Israeli class of Yahoo account holders and is free from collusion. *In*

[3] Settlement Class members had four-and-a-half to six-months to opt-out or object to the proposed Settlement. *See* Declaration of Jeanne C. Finegan, APR, Concerning Implementation of Notice to Settlement Class Members ("Finegan Decl.") (ECF No. 414-1, at 1 ¶3) (notice commenced on September 3, 2019 and was substantially completed on October 17, 2019).

re Bluetooth Headset Prods. Liab. Litig., 654 F.3d 935, 942 (9th Cir. 2011); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 254 (N.D. Cal. 2015) ("[C]ourts must show not only a comprehensive analysis of the [*Churchill*] factors, but also that the settlement did not result from collusion among the parties."). "Courts reviewing class action settlements must 'ensure that unnamed class members are protected "from unjust and unfair settlements affecting their rights,"' while also accounting 'for "the strong judicial policy that favors settlements, particularly where complex class action litigation is concerned."'" *Campbell v. Facebook, Inc.*, No. 17-16873, 2020 WL 102350, at *9, __ F.3d __ (9th Cir. Mar. 3, 2020) (quoting *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3D 539, 568 (9th Cir. 2019) (en banc) (first quoting *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623 (1997); then quoting *Allen v. Bedolla*, 787 F.3D 1218, 1223 (9th Cir. 2015)). The issue is not whether additional benefits could conceivably exist, a condition that, perforce, is true of all negotiated settlements. The Settlement is fundamentally sound, provides an objective, consistent, and transparent structure to efficiently provide benefits to a Class of tens of millions of individuals and small businesses, and there is no hint of collusion among the parties or their counsel. Plaintiffs therefore respectfully urge the Court to overrule the Objections and finally approve the Settlement.

II. ARGUMENT

A. Standards for Reviewing Objections to Class Settlements

As Plaintiffs explained in their Motion for Final Approval of Class Action Settlement [ECF No. 413], Rule 23(e) governs a district court's analysis of a class action settlement. "At the final approval stage, the primary inquiry is whether the proposed settlement 'is fundamentally fair, adequate, and reasonable.'" *In re Google Referrer Header Privacy Litig.*, 87 F. Supp. 3d 1122, 1127 (N.D. Cal. 2015), *aff'd*, 869 F.3d 737 (9th Cir. 2017) (quoting *Hanlon*, 150 F.3d at 1026); *see also Carlin v. DairyAmerica, Inc.*, 380 F. Supp. 3d 998, 1018 (E.D. Cal. 2019) ("The Court is convinced that the above factors, considerations, and lack evidence of collusion weigh in favor of settlement"). Ultimately, "the decision to approve or reject a settlement is committed to the sound discretion of the trial judge because [s]he is exposed to the litigants and their strategies, positions, and proof." *Hanlon*, 150 F.3d at 1026. In reviewing the Settlement, the question the Court must

answer "is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion." *Id.* at 1011, 1027; *see also In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, 895 F.3d 597, 610 (9th Cir. 2018) ("A proposed settlement that is 'fair, adequate and free from collusion' will pass judicial muster.") (quoting *Hanlon*, 150 F.3d at 2027), *cert. denied sub nom. Fleshman v. Volkswagen, AG*, 139 S. Ct. 2645 (2019).

Class-settlement objectors sometimes assist a court with its "obligation to police the settlement of class actions for evidence of collusion." *Staton v. Boeing Co.*, 327 F.3d 938, 979 (9th Cir. 2003). However, those that do object "bear the burden of proving any assertions they raise challenging the reasonableness of a class action settlement." *In re Google Referrer Header Priv. Litig.*, 87 F. Supp. 3d at 1137 (citing *United States v. Oregon*, 913 F.2d 576, 581 (9th Cir. 1990)); *see also Schechter v. Crown Life Ins. Co.*, No. 13-cv-5596, 2014 WL 2094323, at *2 (C.D. Cal. May 19, 2014) (objector bears burden of showing that settlement approval would contravene its equitable objectives).[4]

B. The Objections to the Settlement Should be Overruled

1. Objections of Edward and Darlene Orr [ECF Nos. 343, 363, 433]

Mr. and Mrs. Orr, who have lodged identical objections to other settlements, object to the Settlement here on a few grounds (some of which are, respectfully, incomprehensible) that boil down to the following:

[4] A number of the foregoing objections failed to comply with the requirements set forth in the Settlement and the Court-approved Notice. *See* Objections of Leonard Deshawn Scott [ECF No. 422] (failure to identify: (a) case name and number, (b) identification as class member, (c) prior class settlement objections, and (d) intent to appear); Pedro Payne [ECF No. 438-1, Ex. B] (failure to identify intent to appear); Michael Cherepko [ECF No. . 438-1, Ex. E] (no signature); Mark Wagner [ECF No. . 438-1, Ex. H] (failure to identify intent to appear); Steven Kent Lucker [ECF No. 425] (multiple deficiencies, including failure to identify prior objections and intent to appear); Leah Elliott [ECF No. 438-2, Ex. M] (failure to identify intent to appear or appearance of counsel); and Carol L. Gonzalez [ECF No. 438-2, Ex. Q] (prior objections, attorney representation, appearance intent). Plaintiffs address the arguments of these non-compliant objections to provide the Court with a thorough analysis of the issues, but contest their compliance for appellate-standing purposes. *See Hendricks v. StarKist Co.*, No. 13-cv-00729-HSG, 2016 WL 5462423, at *8 (N.D. Cal. Sep. 29, 2016) (court did not consider objections where objector failed to follow the procedures set forth in the class notice).

- There should be "no limitation in regard to reimbursement for hours spent by injured parties" and "no limitation to physical, mental, emotional, and related damages," Orr Obj. at 9;
- "Time limitations" are "improperly lumped together [with] disparately large claims of the handicapped," *id.* at 10;
- The settlement should be "limited to the non-handicapped individuals," *id.*;
- "Handicapped members deserve substantially more" from the settlement, *id.* at 12; and
- Handicapped individuals are "***not*** capable of fending for themselves," *id.* at 16 (emphasis in original).

The Orrs' Objections lack merit and should be overruled for several reasons.[5] ***First***, in the *ADT* case, which the Orrs' posit is "integrally related" to this case (it is not), Orr Obj. at 4, Judge Tigar rejected the Orrs' challenges that disabled individuals were treated disparately in the settlement. *See Edenborough v. ADT, LLC*, No. 16-CV-02233-JST, 2018 WL 9514899, at *1 (N.D. Cal. Mar. 29, 2018) ("As to the Orrs' second, 'main' objection, the Court concludes that the claimed difference between the rates paid by disabled and non-disabled customers does not destroy the fairness, adequacy, or reasonableness of the settlement because the evidence before the Court is insufficient to conclude that there was such a difference."). Just as in *ADT*, and for the same reasons, the Orrs' Objection on this ground is likewise "insufficient." *Id.* Although the Orrs claim that they have only "objected in one other case (ADT)," Orr Obj. at 17, they have since filed an identical objection in a third case, which has been rejected. *See In re Comcast Corp. Set-Top Cable Television Box Antitrust Litig.*, 333 F.R.D. 364, 381 (E.D. Pa. 2019) (overruling where "two objectors, Edward and Darlene Orr, object on two grounds [including] that the Settlement does not properly take into consideration the needs of handicapped Class Members who should be included in the Settlement as a separate subclass.").

Finally, while the Orrs wish that the Settlement had "no limitation in regard to reimbursement for hours spent by injured parties" and "no limitation to physical, mental,

[5] Where objections such as the Orrs and others "entirely lack[] merit, the district court [is] not obligated to respond" in its final approval decision. *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, 895 F.3d at 613.

emotional, and related damages," Orr Obj. at 9, this is not a valid objection. *See Hanlon*, 150 F.3d at 1027 (objection that settlement could be better not valid). Indeed, to the extent the Orrs believe that they have been damaged more than what is allowed for a recovery under the Settlement, they may opt out of the Settlement Class. *See Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1378 (9th Cir. 1993) ("If [objectors] were dissatisfied, they could opt out of the class. This opportunity to opt out after knowing the terms of a proposed settlement . . . serves to protect the interests of class members."). The Orrs' Objections should be overruled.

2. Objection of Leonard Deshawn Scott [ECF No. 422]

Mr. Scott[6] seeks to both exclude himself from the Settlement Class and to object "to Defendants being relieved or release [sic] from future claims[.]" Scott Obj. at 2. First, by excluding himself from the Settlement Class, the Settlement no longer affects Mr. Scott's rights; accordingly, he lacks standing to object. *See Senegal v. JPMorgan Chase Bank, N.A.*, 939 F.3d 878, 881 (7th Cir. 2019) (objectors to class settlement "can't complain about this or any other element of the (b)(3) aspect of this class, because they have opted out.") (Easterbrook, J.); *Olden v. LaFarge Corp.*, 472 F. Supp. 2d 922, 930 (E.D. Mich. 2007) ("opting out of a settlement and choosing to object logically are mutually exclusive options: if one actually opts out, she has no standing to object to the settlement as she will not be bound by it."); 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* §11:55, at 168 (4th ed. 2002) ("Any ***party*** to the settlement proceeding has standing to object to the proposed settlement").

Regardless, Mr. Scott's objection to the release is spurious. The release granted to Defendants by the Settlement Class does not release "future claims." Instead, the carefully drafted and narrowly tailored release releases only claims "related to or arising from any of the facts alleged in any of the Actions." ECF No. 369-2 at 8. Settlement Class members are not releasing Defendants from any claims that may accrue against Defendants that are unrelated to the data

[6] Mr. Scott is a convicted serial rapist and lifetime high-risk sex offender, serving a minimum of 40 years for his crimes with the Texas Department of Criminal Justice. *See* Davidson Decl., Exs. A-B.

breaches at issue here.[7] Mr. Scott's intimations to the contrary, the Settlement presents no problems under *Amchem Prods., Inc.*, 521 U.S. at 628.

3. Objection of Ryan Bowman [ECF No. 424]

Rather than seeking to protect the interests of the Class as an objector, Mr. Bowman transparently filed his Objection to extract money for himself and an organization he founded. *See* Email from R. Bowman to Class and Defendants' Counsel dated Feb. 6, 2020, Davidson Decl., Ex. C (stating, "against my better judgement . . ., if counsel wishes, in good faith, I am open to negotiation [sic] an incentive fee pursuant to Rule 23 in return for my withdrawal of my objections."). Nonetheless, Plaintiffs respond to each of Mr. Bowman's objections *seriatim*.

- Defendants must make a *cy pres* contribution to obtain settlement approval, Bowman Obj. at 5-6;
- The parties failed to disclose all of the *cy pres* recipients, *id.* at 10;
- Class Counsel's fee request is too big, but would be acceptable "if this was a $300,000,000 class action settlement," *id.* at 10-15;
- The Class Notice "fails to inform the class how much really is at stake" and "what they are giving up," *id.* at 15; and
- Service Awards are too low and should be "adjust[ed] to $75,000, $50,000, and $25,000, respectively," *id.*

Mr. Bowman concludes his Objection by requesting that which he emailed Class and Defendants' counsel, *i.e.*, that he be privately paid to withdraw his Objection – a wholly inappropriate "objector's incentive fee." *Id.* at 16. Mr. Bowman requests that the Court award him and the organization he founded, Pennsylvania Outdoor Veterans, Inc. ("POV"), a 20% "objector's incentive fee," with said fee to be awarded among Mr. Bowman and POV with a split of $500,000 to Mr. Bowman and the "difference in a *cy pres* award to [POV]," based on his supposition that there is "the potential for an additional $11 million in payments and additional *cy pres* as part of this settlement agreement." *Id.* at 16-17.

[7] Of course, the exception to this rule is where the future claim is "based on the identical factual predicate as that underlying the claims in the settled class action." *Hesse v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir. 2010).

First, Mr. Bowman's demand for an additional *cy pres* distribution is baseless and unprecedented. In accord with prevailing legal precedent, the Settlement ensures that the *Settlement Class* recovers as much of the Settlement Fund as possible, not a *cy pres* recipient. As explained in the Settlement Agreement, "[n]o portion of the Settlement Fund shall revert or be repaid to Defendants[.]" ECF No. 369-2 at 19. The "residue" of the Settlement Fund, if any, will first be used to increase the valuable Alternative Compensation from $100 to a maximum of $358.90 per Settlement Class member. *Id.* If that compensation increase still results in a residual, additional months of credit monitoring services will be purchased for the Settlement Class. *Id.* And if, and only if, a residue still remains, which at this point would be *de minimus*, the residue will be paid to two *cy pres* recipients[8] in accordance with Ninth Circuit law mandating that "[c]y pres distributions ***must*** account for the nature of the plaintiffs' lawsuit, the objectives of the underlying statutes, and the interests of the silent class members, including their geographic diversity." *Nachshin v. AOL, LLC*, 663 F.3d 1034, 1036 (9th Cir. 2011). Even if Mr. Bowman's objection on this point were valid (it is not), Mr. Bowman's Pennsylvania charity fails on its face to qualify for *cy pres* distribution.

Second, Mr. Bowman's Objection that Class Counsel's fee request is too large (but somehow would be ok if the Settlement Fund was $300 million) lacks merit. As Plaintiffs explained in their application for an award of attorneys' fees, expenses, and service awards, ECF No. 416, Class Counsel's fee request sits closely to the Ninth Circuit's benchmark and to common fund awards in similar cases; it also represents less than a 1.5 multiplier to Class Counsel's lodestar.

Third, with respect to the Class Notice, Mr. Bowman objects on the ground that he did not know "how much really is at stake." Bowman Obj. at 5-6. But "there is no requirement that a notice inform class members of the precise dollar amount they will receive from a settlement." *Zamora v. Lyft, Inc.*, No. 16-CV-02558-VC, 2018 WL 5819511, at *1 (N.D. Cal. Nov. 6, 2018)

[8] Contrary to Mr. Bowman's Objection, both proposed *cy pres* recipients are fully disclosed. ECF No. 369-2 at 19-20.

(citing *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 946 (9th Cir. 2015) (reiterating that a settlement notice is sufficient if it "alert[s] those with adverse viewpoints to investigate and to come forward and be heard") (quoting *Lane v. Facebook*, 696 F.3d 811, 826 (9th Cir. 2012))). The Court-approved Class Notice was proper and comports Due Process. *See* Finegan Decl. [ECF No. 369-6]; *see also* 5-23 Moore's Federal Practice – Civil §23.162 (2016); I Federal Class Action Deskbook Unit IV §4.102 (2016).

Finally, while Plaintiffs do not necessarily take issue with Mr. Bowman's suggestion that the service awards sought for each Class Representative should be higher in light of the incredible amount of effort each took to prosecute and settle this complex case, Plaintiffs' service-award requests are squarely in line with Ninth Circuit law and this Court's precedent and should be approved. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d at 947; *Huynh v. Hous. Auth. of Cty. of Santa Clara*, No. 14-CV-02367-LHK, 2017 WL 1050539, at *9 (N.D. Cal. Mar. 17, 2017) (Koh, J.) (awarding $10,000 for each Plaintiff household as incentive awards).

4. Objection of James McCain, Represented by Serial Objectors Christopher Bandas and Timothy Hanigan [ECF No. 429]

Evidently undeterred by the federal judiciary's repeated and strong admonitions, attorney and serial objector Christopher Bandas has filed yet another cookie-cutter, vexatious objection to a class action settlement. Perhaps recognizing that his continued serial objections will appropriately cause skepticism of their merit, Mr. Bandas – as he has before – enlisted the assistance of other attorneys in lodging his objection here. Although Mr. Bandas appropriately attaches to his *pro hac vice* application a copy of Northern District of Illinois Judge Rebecca Pallmeyer's final judgment of permanent injunction against him, Mr. Bandas assumes that doing so somehow demonstrates that his Objection here must have been filed in "good faith." ECF No. 435-3. It was not. Mr. Bandas' Objection on behalf of Mr. McCain – at least the second time Mr. Bandas has represented Mr. McCain as an objector[9] – should be rejected. His arguments have been rejected time and again in like cases.

[9] *See* Objections of James McCain and Ashley McCain, *In re Takata Airbag Prods. Liab. Litig.*, No. 1:15-md-02599 (S.D. Fla. Sept. 22, 2017), ECF No. 2068.

a. Mr. Bandas and Mr. Hanigan are Serial Objectors With Histories of Filing Meritless Objections and Receiving Court Admonitions

Mr. Bandas should be well known to this Court. His unethical conduct as an attorney representing objectors to class action settlements has received quite a lot of notoriety. For years, Mr. Bandas' business model was to "routinely represent[] objectors purporting to challenge class action settlements, . . . not do so to effectuate changes to settlements, but . . . for his own personal financial gain." *In re Cathode Ray Tube (CRT) Antitrust Litig.*, 281 F.R.D. 531, 533 (N.D. Cal. 2012) (Conti, J.). Mr. Bandas "has been excoriated by Courts." *Id.*; *see also, e.g.*, *In re Optical Disk Drive Prods. Antitrust Litig.*, No. 3:10-MD-2143 RS, 2016 WL 7364803, at *11 (N.D. Cal. Dec. 19, 2016) (Seeborg, J.) (noting that Mr. Bandas "frequently file[s] objections in class action settlement proceedings."); *In re Gen. Elec. Sec. Litig.*, 998 F. Supp. 2d 145, 156 (S.D.N.Y. 2014) (noting that Mr. Bandas "has been repeatedly admonished for pursuing frivolous appeals of objections to class action settlements" and concluding that the objector's "relationship with Bandas**, *a known vexatious appellant***, further supports a finding that [the objector] brings this appeal in bad faith"); *In re Hydroxycut Mktg. & Sales Practices Litig.*, No. 09CV1088 BTM KSC, 2013 WL 5275618, at *5 (S.D. Cal. Sept. 17, 2013) (noting that "Mr. Bandas was attempting to pressure the parties to give him $400,000 to withdraw the objections and go away" and "was using the threat of questionable litigation to tie up the settlement unless the payment was made"); *Embry v. ACER Am. Corp.*, No. C 09-01808 JW, 2012 WL 3777163, at *2 (N.D. Cal. Aug. 29, 2012) (Ware, J.) ("Objector Bandas' failure to comply with the Court's July 31 Order and August 22 Order warrants a finding that Objector is in contempt, and impos[ing] the sanction of striking Objector's objection to the Final Settlement."); *Clark v. Gannett Co.*, 122 N.E. 3d 376, 380 (Ill. Ct. App. 2018) (Mr. Bandas has "earn[ed] condemnation for [his] antics from courts around the country. Yet, [his] obstructionism continues.").

Tellingly, in 2018, the Illinois Appellate Court in *Clark* ruled that Mr. Bandas had "engaged in a fraud on the court" by failing to file a *pro hac vice* appearance and filing an objection for an improper purpose – mainly to extract payment in exchange for withdrawing an objection – and referred him to the disciplinary commission for aiding the unauthorized practice of law. *Clark*,

122 N.E.3d at 390-92 (finding that another attorney "was merely the frontman for the objection so that Bandas did not have to sign any pleadings or appear in court."), *reh'g denied* (Jan. 18, 2019).[10]

And, just last year, following a racketeering lawsuit against Mr. Bandas alleging extortionate conduct in seeking payoffs for dropping objections to class settlements, Judge Pallmeyer in the Northern District of Illinois permanently enjoined Mr. Bandas from, *inter alia*, seeking *pro hac vice* admission in ***any*** state or federal court without notifying that court of the Court's final judgment against him and objecting to ***any*** class action settlement, in state or federal court, without complying with various conditions. *Edelson PC v. Bandas Law Firm PC*, No. 1:16-CV-11057, 2019 WL 272812, at *1 (N.D. Ill. Jan. 17, 2019). In *Edelson*, Mr. Bandas admitted that he had engaged in "unethical, improper, and misleading conduct in filing or causing to be filed objections to proposed class action settlements" and "admit[ted] that [he has] engaged in the unauthorized practice of law in Illinois."[11] The amount of time and effort federal and state courts around the nation have spent addressing Mr. Bandas' admittedly "unethical" objections cannot be overstated. Yet, Mr. Bandas presses forward unabated.

Mr. Hanigan, while perhaps not as notorious as Mr. Bandas, is also a serial objector, including, more recently, with Mr. Bandas (due almost certainly, in part, to Judge Pallmeyer's permanent injunction against Bandas). *See McKnight*, 2019 WL 3804676, at *4-5 (objector "represented by Chris Bandas and Timothy Hanigan," and noting that both Bandas and Hanigan are "serial objectors") (Tiger, J.); *see also Abante Rooter & Plumbing, Inc. v. Pivotal Payments Inc.*, No. 3:16-CV-05486-JCS, 2018 WL 8949777, at *2 (N.D. Cal. Oct. 15, 2018) (Objector "filed an objection through its counsel, Timothy Hanigan. [The Objector's] objection stated that it was also represented by attorney Christopher Bandas, who chose not to make an appearance but reserved the right to do so."); *Chambers v. Whirlpool Corp.*, No. SACV111733FMOJCGX, 2016

[10] Here Mr. Bandas uses Mr. Hanigan as his "frontman," as he has recently done in other cases. *See, e.g.*, *McKnight v. Uber Techs., Inc.*, No. 14-CV-05615-JST, 2019 WL 3804676, at *4, *5 (N.D. Cal. Aug. 13, 2019).

[11] *See* Defendants' Motion for Leave to Amend Answer and Withdraw Counterclaim and for Judgment on the Pleadings at 2, *Edelson PC v. Bandas Law Firm PC*, No. 1:16-CV-11057 (Jan. 15, 2019), ECF No. 175.

WL 9451360, at *2 (C.D. Cal. Aug. 12, 2016) (referring to Messrs. Hanigan and Bandas as "serial objectors" and ordering discovery of both attorneys, concluding that "there is good cause to question whether Hanigan and Bandas have a motive other than putting the interest of the class members first.").

The cases cited above comprise a mere sampling of Mr. Bandas' and Mr. Hanigan's vexatious, unethical, and unacceptable conduct as attorneys.[12] While Plaintiffs respond next to the substantive arguments made in the McCain Objection, Plaintiffs nevertheless implore the Court not to give these individuals an undeserved platform to continue burdening the courts, litigants, and a significant number of Settlement Class members who deserve – and want – the substantial compensation and other benefits afforded by the Settlement.

b. The Arguments Raised in the McCain Objection are Frivolous

Through Mr. Bandas and Mr. Hanigan, Mr. McCain raises several objections to the Settlement: (1) Plaintiffs' requested incentive awards render them inadequate representatives of the Settlement Class because they agreed not to object to the Settlement, McCain Obj. at 4-7; (2) there is an improper "quick-pay" of Class Counsel's awarded fees in the Settlement, *id.* at 7-12; (3) the fee award requested is excessive, and should be limited to 16.6%-19.9%, *id.* at 12-19. Each are without merit and have consistently been rejected by other courts, including the Ninth Circuit.

First, Mr. McCain argues that the Settlement Class Representatives are inadequate because they have sought service awards and agreed not to object to the Settlement. But this argument ignores binding Ninth Circuit precedent. In *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934 (9th Cir. 2015), the Court rejected objectors' challenge to a settlement on this very basis, and concluded that service awards did not render a class representative inadequate where "the class

[12] For an additional, non-exhaustive list of Mr. Bandas' other objections, and additional history about Mr. Bandas, the majority originating in this Circuit, *see* Michael J. Bologna, *Notorious 'Serial Objector' May Have Filed His Last Objection*, BLOOMBERG LAW (Mar. 12, 2019), https://news.bloomberglaw.com/class-action/notorious-serial-objector-may-have-filed-his-last-objection-1 (last updated Mar. 12, 2019). Mr. Hanigan has himself objected to no less than 18 settlements. *See* Timothy R. Hanigan, https://www.serialobjector.com/persons/10 (last visited Mar. 9, 2020).

settlement agreement provided no guarantee that the class representatives would receive incentive payments, leaving that decision to later discretion of the district court." *Id.* at 943 (distinguishing McCain's principal authority, *Radcliffe v. Experian Info. Sol., Inc.*, 715 F.3d 1157 (9th Cir. 2013)). The same is true here. The Amended Settlement Agreement is quite clear that "Settlement Class Representatives . . . ***may*** seek Service Awards," that such awards are at the complete discretion of the Court, and that if "the Court declines to approve, in whole or in part, the payment of the Service Awards in the amounts requested, the remaining provisions of this Agreement shall remain in full force and effect." ECF No. 369-2 at 23-24, ¶¶11.1-11.3. Absolutely no promises or guarantees of any kind were made to Settlement Class Representatives regarding Service Awards; the request for the service awards accord with Ninth Circuit precedent,[13] rendering *Online DVD-Rental*, not *Radcliffe*, squarely on point.

Second, it is not surprising that Mr. Bandas and Mr. Hanigan would object to a quick-pay provision in a settlement agreement. After all, one of the principal prudential reasons for the provision is precisely to prevent the very extortion of class counsel, for which Messsrs. Bandas and Hanigan are notorious. *See* Brian T. Fitzpatrick, *The End of Objector Blackmail?*, 62 VAND. L. REV. 1623, 1647 (2009) (highlighting concerns of objector "blackmail" and class counsel's use of quick-pay provisions to deter frivolous objections). Regardless, as Judge Illston explained, "[w]ith respect [to] the 'quick pay' provisions, [f]ederal courts, including this Court and others in this District, routinely approve settlements that provide for payment of attorneys' fees prior to final disposition in complex class actions." *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. MDL 3:07-MD-1827 SI, 2011 WL 7575004, at *1 (N.D. Cal. Dec. 27, 2011) (collecting cases); *see also In re Optical Disk Drive Prods. Antitrust Litig.*, 2016 WL 7364803, at *13 ("Quick pay provisions are common practice in the Ninth Circuit.") (Seeborg, J.); *Brown v. Hain Celestial Grp., Inc.*, No.

[13] Indeed, one of the reasons the Ninth Circuit rejected this objection in *Online DVD-Rental* was that the service award at issue – $5,000 for each of the nine class representatives – "was relatively small, well within the usual norms of 'modest compensation' paid to class representatives for services performed in the class action." *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d at 943 (citing *Phillips v. Asset Acceptance, LLC*, 736 F.3d 1076, 1080 (7th Cir. 2013) and *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000)).

3:11-CV-03082-LB, 2016 WL 631880, at *10 (N.D. Cal. Feb. 17, 2016) (approving settlement and rejecting quick-pay objection where, like here, "[t]he plaintiffs' counsel has the option of being paid fees before resolution of any appeal; they also must return them immediately if the settlement is overturned on appeal.") (Beeler, M.J.); *Rose v. Bank of Am. Corp.*, No. 5:11-CV-02390-EJD, 2015 WL 2379562, at *3 (N.D. Cal. May 18, 2015) (rejecting objection that a quick-pay "provision . . . is unfair, given that class counsel will soon be paid its fees but the class members' benefits are delayed") (Davila, J.); *Miller v. Ghirardelli Chocolate Co.*, No. C 12-04936 LB, 2014 WL 4978433, at *5 (N.D. Cal. Oct. 2, 2014) ("Such 'quick pay' provisions are routinely approved by courts in this district.") (Beeler, M.J.); *Embry v. ACER Am. Corp.*, No. C09-01808 JW, 2012 WL 13059929, at *1 (N.D. Cal. July 31, 2012) (overruling "contention that the quick-pay provision of the settlement agreement created a conflict between class counsel and members of the class.") (Ware, J.). It is also important to note that "[t]he quick-pay provision does not harm the class members in any discernible way, as the size of the settlement fund available to the class will be the same regardless of when the attorneys get paid." *In re Lumber Liquidators Chinese-Manufactured Flooring Prods. Mktg., Sales Practices & Prods. Liab. Litig.*, No. 18-2351, 2020 WL 1140842, at *9 (4th Cir. Mar. 10, 2020).

While conceding that quick-pay provisions were routinely approved in this District for years, Mr. McCain posits that they are no longer necessary because the ability to extort class counsel, as Mr. Bandas admits to having done for years, was removed with the December 2018 amendments to Rule 23. McCain Obj. at 9. That is incorrect. The amendment requires only court approval of any payments to objectors. It does not, as Mr. McCain insists, follow that objectors are any less incentivized to pursue them. Indeed, since Rule 23(e) was amended as of December 1, 2018, serial objectors have continued unabated.[14] Besides, there is an uninterrupted line of cases from this District holding that quick-pay provisions, regardless of their original purpose, are

[14] *See, e.g.*, *In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2800-TWT, 2020 WL 256132, at *41-42 (N.D. Ga. Jan. 13, 2020); *McKnight*, 2019 WL 3804676, at *5; *Hefler v. Wells Fargo & Co.*, No. 16-CV-05479-JST, 2018 WL 6619983, at *16 n.19 (N.D. Cal. Dec. 18, 2018); *Eubank v. Pella Corp.*, No. 06-CV-4481, 2019 WL 1227832, at *9 (N.D. Ill. Mar. 15, 2019).

reasonable and appropriate.[15] That a court in New York does not agree does not overturn a decade of case law from this District. McCain Obj. at 429 at 9 (citing *Hart v. BHH, LLC*, No. 15CV4804, 2020 WL 254779, at *2 (S.D.N.Y. Jan. 17, 2020)).

What's more, after December 1, 2018, the effective date of the Rule 23(e) amendment, Judge Tigar approved a class action settlement containing a quick-pay provision. *See* Order Awarding Attorneys' Fees and Litigation Expenses, *Hefler v. Wells Fargo & Co.*, No. 3:16-cv-05479 (N.D. Cal. Dec. 20, 2018) (ECF No. 254); *see also* Stipulation and Agreement of Settlement at 18, ¶17, *Hefler v. Wells Fargo & Co.*, No. 3:16-cv-05479 (N.D. Cal. July 31, 2018) (ECF No. 225-1).[16] And, even more recently, the Fourth Circuit expressly ***rejected Mr. Bandas' identical objection***, approving a quick-pay provision in a detailed analysis. *See In re Lumber Liquidators*, 2020 WL 1140842, at *9 ("when the lawyers get paid matters little when, as here, there is no established danger that the nonmonetary relief awarded to the class will actually be rendered worthless, and Class Counsel have promised to refund (with interest) the fees awarded pursuant to the quick-pay provision if the Attorney's Fees Order is vacated.").

Third, Mr. McCain opines that the Settlement here is "inferior" to other data breach settlements (*i.e.*, *Anthem* and *Equifax*), and, thus, Class Counsel's fee request should be

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[15] Even the *Duke Guidelines and Best Practices* on ***implementing new Rule 23(e)*** includes this passage:

> The parties may consider whether there are other means of discouraging bad-faith objectors. For example, the parties could: (1) include in the settlement agreement a provision that prohibits the parties from paying an objector to dismiss an appeal; (2) seek an order from the district court enjoining objectors from dismissing appeals in exchange for payment or other consideration; ***or (3) include a "quick-pay clause," providing that class counsel receives attorney fees even if an appeal is taken and before the class is paid, but requiring counsel to return the fees paid if the award is reversed on appeal.***

GUIDELINES AND BEST PRACTICES IMPLEMENTING 2018 AMENDMENTS TO RULE 23 CLASS ACTION SETTLEMENT PROVISIONS at 21, BOLSCH JUD. INST., DUKE LAW SCHOOL (Aug. 2018), https://judicialstudies.duke.edu/wp-content/uploads/2018/09/Class-Actions-Best-Practices-Final-Version.pdf.

[16] Mr. McCain supposes that "[p]resumably, Yahoo "extract[ed] something in return—perhaps a smaller total settlement amount." McCain Obj. at 10. The record completely refutes this naked assumption. *See* Declaration of John Yanchunis in Support of Plaintiffs' Settlement, ECF No. 369-1, ¶20.

substantially reduced.[17] McCain Obj. at 12-14. This is incorrect for many reasons. As Plaintiffs explained in their final approval papers, ECF No. 414 at 20-21, although the size of the Settlement Class here is larger than in *Anthem*, the available compensation to Settlement Class members here significantly exceeds that in *Anthem*. In *Anthem*, class members could receive up to $10,000 in reimbursement. Here, Settlement Class members can receive 150% of that number. In *Anthem*, time spent addressing the data breach was $15 per hour or the class member's hourly rate, while here, Settlement Class members can recover their time spent addressing any one of the data breaches at no less than $25 per hour. And, even more dramatically, Alternative Compensation in *Anthem* was capped at $50. Here, Settlement Class members electing Alternative Compensation are eligible to receive up to $358.80, or six times the amount in *Anthem*. By any measure, this Settlement is superior to *Anthem*.

In addition, even accepting Mr. McCain's argument that this Settlement is less beneficial to class members than *Anthem* or *Equifax*, it is critically important to understand that, unlike here, the data stolen in both *Anthem* and *Equifax* was qualitatively different and also more valuable to data thieves. Every class member in *Anthem* had their birth dates, medical IDs, Social Security numbers, street addresses, and employment information stolen; some also had income information stolen. Every class member in *Equifax* had their credit records, Social Security numbers, and birth dates stolen; some also had credit card numbers stolen). The same is not true here. The theft of email accounts is qualitatively different. In discovery, Yahoo demonstrated that many Settlement

[17] The ostensible reason for the objection to the fee request is so that, if this Court reduces Class Counsel's fee award, Mr. Bandas and Mr. Hanigan will be swiftly back in front of this Court seeking their own fee award on the ground that their efforts benefited the Settlement Class. McCain Obj. at 11. Indeed, in *In re Syngenta AG MIR 162 Corn Litigation*, Mr. Bandas, Mr. Hanigan, and others entered into an "Objector Settlement Agreement" with Class Counsel to dismiss their Tenth Circuit appeals from a class settlement in exchange for payment of their attorneys' fees. Order Approving Objector Settlement Agreement and Attorneys' Fees and Expenses at 1, *In re Syngenta AG MIR 162 Corn Litig.*, No. 2:14-md-02591 (D. Kan. Jan. 6, 2020) (ECF No. 4308) (explaining that Plaintiffs and objectors "filed a ***joint motion*** requesting that the Court issue an indicative ruling that if the Tenth Circuit returned jurisdiction to this Court, ***the Court would approve the Objector Settlement Agreement and attorneys' fees and expenses to Objectors' counsel in exchange for the dismissal with prejudice of the Objectors' appeals of the class action settlement and fee award*** previously approved by this Court."). Remarkably, Messrs. Bandas and Hanigan tout class counsel's concession to payment of their fee in *Syngenta* as evidence of their good work on behalf of class members.

Class members had used fake PII, including names, addresses, and dates of birth to create their Yahoo accounts. Some used their Yahoo accounts solely to handle spam emails. Others had not used their Yahoo accounts at all for years because they had switched to other email providers and for other reasons. More importantly, what was accessed were the keys to access accounts, and proof was absent that the accounts of class members were accessed on scale. How should those individuals' stolen data be valued? Thus, it is simply unfair to judge substantively this Settlement against *Equifax* or *Anthem*, even though the results here are superior to *Anthem* in a number of respects.

Mr. McCain also criticizes Plaintiffs for not "proffer[ing] a comparison of the $117.5 million settlement relative to class damages." McCain Obj. at 15. Mr. McCain's criticism misses the mark. While Plaintiffs went to great length in their class certification briefing to proffer viable class-wide damage models, whether the Court (and a jury) would ultimately accept their models was anything but certain. A core concern Plaintiffs here faced was whether the Court would accept Plaintiffs' experts' damage averaging, a fundamentally necessary position due to varying types of personal information stolen from Class members. Indeed, Judge Alsup recently rejected certification of a Rule 23(b)(3) damages class in a Facebook case arising out of a 2018 breach on the ground that plaintiffs could not demonstrate independent value of their personal information, *Adkins v. Facebook, Inc.*, No. C 18-05982-WHA, 2019 WL 7212315, at *7 (N.D. Cal. Nov. 26, 2019). *Adkins* highlights the fundamental risk Plaintiffs faced of ultimately getting no monetary relief, or nothing at all. Accordingly, Mr. McCain's conclusory contention that "potential damages" in this case "are undeniably staggering" is patently incorrect.[18]

Finally, Mr. McCain disagrees with Professor Miller's opinion as to the reasonableness of Class Counsel's fee request, and asserts that Class Counsel faced no risk. McCain Obj. at 16-19.

[18] The fact that one of Plaintiffs' experts, Ian Ratner, stated that "[a]n individual's entire portfolio of PII has been valued as high as $1,200 per person," McCain Obj. at 16, says nothing about the value of each individual Settlement Class members' PII ***in this case***. Putting aside that Judge Alsup rejected Mr. Ratner's market-based damages approach in *Facebook*, and that PII varied from account holder to account holder, Mr. Ratner's actual opinion in this case was not that damages per class member was $1,200, but that it was actually between $1.02 and $1.46. *See* ECF No. 254-9 at 18, ¶32.

With respect to Professor Miller's opinion, Class Counsel ask the Court to judge the credibility and credentials of the individuals in disagreement; Professor Miller on the one hand, and two serial objectors with admittedly unethical backgrounds whom the federal judiciary has condemned.

While Mr. McCain may believe that Class Counsel faced "limited risk," McCain Obj. at 18, it seems curious that neither Mr. Bandas nor Mr. Hanigan sued Yahoo following the breaches. If obtaining certification of a damages class, and winning "undeniably staggering" damages for the class at trial, came with no risk, where were they? Why haven't they even filed an individual lawsuit on Mr. McCain's behalf? The answers are clear. This action was massive in scale and complexity, posed extraordinary risks (particularly at the class-certification stage), and required tens of thousands of hours of time and millions of dollars out-of-pocket expenses. Class counsel needed to (a) apply their expertise to map out the still nascent legal landscape of data breach class litigation; (b) discover, process, and understand complicated facts through a pastiche of truncated, intermittent, and voluminous documents and data; (c) work and consult with some of the best experts in the field to understand information and data security in the circumstance; (d) position the case as best as possible to obtain class certification, which was far from certain; (e) develop damage models relevant to the particular circumstances of the breaches at issue, particularly in light of Defendants' challenges to the integral element of recovery, and causation; and (f) obtain a valuable, adequate and fair settlement for the Settlement Class given the clear risk of no recovery for the class. Through it all, Mr. Bandas and Mr. Hanigan did nothing. Hence their inability or willingness to appreciate or acknowledge Class Counsel's efforts and expenditures despite significant risk.

5. Objection of Aaron Miller [ECF No. 432]

Steve A. Miller – a Denver attorney who, like Messrs. Hanigan and Bandas, has filed meritless objections to numerous other class action settlements – represents Mr. Miller. *See, e.g.*, *Hefler*, 2018 WL 6619983, at *16 n.19 (noting "the apparent history of objector's counsel, Steve Miller and John Pentz, as serial meritless objectors."); *Chambers v. Whirlpool Corp.*, 214 F. Supp. 3d 877, 890 (C.D. Cal. 2016) (noting that Mr. Miller is a "serial objector"); *In re Fortman*, No. 4:16-MC-421 RLW, 2016 WL 4046760, at *1 (E.D. Mo. July 27, 2016) (discussing Mr. Miller's

representation of objector and ordering discovery of objector); *see also In re Bank of Am. Corp. Sec., Derivative, & Emp. Ret. Income Sec. Act (ERISA) Litig.*, 772 F.3d 125, 129 (2d Cir. 2014) (affirming final approval of class settlement contested on appeal by Mr. Miller and his objector).

Mr. Miller raises the following objections to the Settlement, none of which has merit: (a) Settlement Class members must accept credit-monitoring services "instead of selecting cash," Miller Obj. at 3-7; (b) AllClear ID is not a good credit monitoring company, *id.* at 7-12; and (c) Class Counsel's fee award request is too large. *Id.* at 12-15.

First, Mr. Miller's understanding of the Settlement benefits is patently wrong. No Settlement Class member must accept credit-monitoring services. That fact is made abundantly clear in the Claim Form, which does not require a Settlement Class member to claim anything he or she does not want. Settlement Class members may opt to receive cash payments (up to $25,000) from the Settlement. These Settlement Class member must show they suffered economic harm due to one of the data breaches through minimal documentation. This cash compensation is in addition to cash available for time spent addressing one of the data breaches, paid at $25.00 per hour, and cash (up to $358.80) if the Settlement Class member already has a credit monitoring service. Given that this Court has granted final approval to a class settlement with a compensation structure significantly less than the structure here, *see In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. at 319, which itself was greater than the prior data breach consumer settlements in *Home Depot* and *Target*, Mr. Miller's Objection is baseless.[19]

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[19] Mr. Miller oddly asserts that, "The FAQs do not inform the class members that the 'credit monitoring' is being paid out of the settlement fund of $117 Million." Miller Obj. at 4. The Home page of the Settlement website specifically discloses that

> Defendants will also pay for a Settlement Fund of $117,500,000. The Settlement Fund will provide a minimum of two years of Credit Monitoring Services to protect Settlement Class Members from future harm, or an alternative cash payment for those who verify they already have credit monitoring or identity protection.

Yahoo! Inc. Customer Data Security Breach Litigation Settlement, https://yahoodatabreachsettlement.com/. In addition, the Claim Form states that "[t]he Settlement Fund will also be used to pay for Credit Monitoring Services or Alternative Compensation for those who already have credit monitoring." https://yahoodatabreachsettlement.com/en/Claim/AccountHolderClaimForm.

Second, contrary to Mr. Miller's selected online consumer complaints, AllClear ID is one of the most reputable, independent credit monitoring companies in the business. AllClear ID is accredited by, and has an "A+" rating with, the Better Business Bureau ("BBB"), with no published complaints since 2018 and all prior complaints having been resolved, evidencing that when a consumer complains, AllClear ID acts quickly to resolve it. *See* AllClear ID, BETTER BUS. BUR., https://tinyurl.com/trgg9tw (last visited Mar. 8, 2020); Declaration of AllClear ID ("AllClear Decl."), ¶8, attached hereto as **Exhibit 2**. AllClear ID is not just a company consumers hire to monitor their credit and identity, but "has helped thousands of businesses prepare for, respond to, and recover from data breaches. It has successfully managed some of the largest data breaches in history" – including, Anthem, Home Depot, HealthNet, and Sony – "and has been utilized to notify more than two hundred million people in other breaches." ECF No. 369-25 at 1, ¶6; AllClear Decl., ¶7.

AllClear ID has consistently maintained a 96% customer satisfaction rating along with 100% success resolving financial identity theft cases. AllClear Decl., ¶4. It has won 33 Stevie awards for outstanding customer service, and averaged above a 70 Net Promoter Score (NPS) score for all clients combined, where world-class service is considered 70 and above. *Id.*, ¶¶5-6. AllClear maintains a strong security and privacy policy posture, and provides monitoring services from more than two million people. *Id.*, ¶¶10, 12.

Finally, Mr. Miller's objection to Class Counsel's fee request is off base. Relying on Professors Eisenberg and Miller's seminal empirical study on class settlement fee awards, Mr. Miller argues, "a reasonable fee award should utilize sliding scale percentage to prevent a windfall for plaintiffs' attorneys at the expense of the class." Miller Obj. at 13. Here, Professor Miller himself opines about this this very Settlement and unhesitatingly concludes that Class Counsel's "fee request is reasonable when judged in light of the facts and circumstances of this case and compared to fees awarded in similar cases." Declaration of Professor Geoffrey Parsons Miller in Support of Plaintiffs' Motion for Attorneys' Fees and Expenses ("Miller Decl."), ECF No. 416-1

at 3, ¶8. Moreover, as Plaintiffs have explained, "[t]he requested percentage [even] accords with the vast majority of so-called 'megafund' settlements." ECF No. 416 at 4 (citing cases).[20]

Mr. Miller's argument that "the value of the 'credit monitoring' is vastly overstated," Miller Obj. at 14, misrepresents this Court's decisions in *Anthem*. As articulated in Plaintiffs' fee brief, [ECF No. 416 at 7-8], in *Anthem*, this Court not only concluded that the "nonmonetary relief benefits millions of Settlement Class Members, including those who did not submit a claim form," counseled in favor of settlement approval, *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. at 319, but also concluded that even if the value of the business practice changes was different than that posited by class counsel, "the results achieved on behalf of the Class, including the nonmonetary relief, ***heavily weigh*** in favor of granting Class Counsel's request for a fee award of more than 25%." *In re Anthem, Inc. Data Breach Litig.*, No. 15-MD-02617-LHK, 2018 WL 3960068, at *11 (N.D. Cal. Aug. 17, 2018); *see also* Miller Decl. at 13-14, ¶38 (explaining that the significant business practice changes can be taken into account when determining a reasonable fee).

In sum, Plaintiffs and Class Counsel have achieved a $117.5 million common fund for Settlement Class members. For their efforts, Class Counsel have requested fees that accord with Ninth Circuit law and rulings by this Court and in similar cases. The Court should reject Mr. Miller's Objection.

6. Objection of Wanda Jewell [ECF No. 438-1, Ex. A]

Ms. Jewell objects to the Settlement to the extent that she believes she is being "forced to use the settlement for credit monitoring." Jewell Obj. at 1. She believes that Yahoo should have been "protecting [her] against their service in the first place." *Id.* She also complains that, if Yahoo were the entity providing credit-monitoring services, it would be inappropriate. *Id.* She "would prefer to get a cash settlement." *Id.*

[20] The Ninth Circuit has rejected a categorical "megafund" rule. *Vizcaino v. Micorsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002).

Ms. Jewell's Objections should be overruled as groundless. As noted above with respect to Mr. Miller's Objection, nothing in the Settlement requires a Class member to obtain credit monitoring, and Yahoo is not providing credit monitoring; an independent, highly reputable credit and identity theft monitoring company is doing so. *See* ECF No. 369-2 at 14-16. Moreover, Ms. Jewell, like all Class members, may in fact lodge a claim for cash payment.

To the extent Ms. Jewell believes she should be entitled to a greater cash payment than that provided for in the Settlement, as discussed above, her objection fails as she has not met her burden of showing what additional amount of cash payment would be appropriate and how the Settlement achieved here is unreasonable. *In re Google Referrer Header Priv. Litig.*, 87 F. Supp. 3d at 1137; *Schechter*, 2014 WL 2094323, at *2; *see also Hanlon*, 150 F.3d at 1027.

7. Objection of Pedro Payne [ECF No. 438-1, Ex. B]

Mr. Payne's Objection is grounded in the fact that his bank account may have been accessed by an unauthorized person "as early as August 25, 2010," and he believes the Yahoo breach "is the answer to a lot of [his] problems" since he "lo[st] thousands of dollars, starting around those dates." Payne Obj. at 1. Mr. Payne also wants to file a claim in the Settlement, but does not "want to give up the right to file a lawsuit or seek further compensation." *Id.* at 2.

Putting aside that Mr. Payne's Objection does not identify how he believes he is a Settlement Class Member,[21] Mr. Payne's Objection is easily refuted. First, any damages Mr. Payne may have suffered, or claims that may have accrued, starting in 2010 are not being released in this Settlement. The Settlement release is narrowly tied only Yahoo's data security breaches 2012, 2013, and 2014 as well as the cooking-forging activity that occurred in 2016. *See* ECF No. 369-2 at 8. Second, Mr. Payne may submit a claim under the Settlement for damages he believes he may have suffered from the actual data breaches at issue in this case. Third, if Mr. Payne does not wish to give up his rights to file a lawsuit against Yahoo and seek further compensation, Mr. Payne had

[21] *See San Francisco NAACP v. San Francisco Unified Sch. Dist.*, 59 F. Supp. 2d 1021, 1032 (N.D. Cal. 1999) ("[N]onclass members have no standing to object to the settlement of a class action.").

every right to opt out of the Settlement Class and preserve those rights, but didn't. *See Torrisi*, 8 F.3d at 1378.

8. Objection of Patrick Catel [ECF No. 438-1, Ex. C]

Mr. Catel's Objection lacks any substance and fails to meet his burden to demonstrate that the proposed Settlement is unfair and unreasonable. Mr. Catel simply complains in conclusory fashion that the Settlement is "grossly inadequate." Catel Obj. at 1. Having failed to meet his burden, Mr. Catel's Objection should be overruled. *See Hanlon*, 150 F.3d at 1027; *In re Google Referrer Header Priv. Litig.*, 87 F. Supp. 3d at 1137; *Schechter*, 2014 WL 2094323, at *2.[22]

9. Objection of Mihail Seroka [ECF No. 438-1, Ex. D]

Mr. Seroka's Objection mirrors that of Ms. Jewell in that he wants "cash compensation," not credit monitoring. Seroka Obj. at 1. Although conceding that he is not able to tie any of his alleged damages to any of the breaches at Yahoo, *id.*, a fact that Plaintiffs have explained militates in favor of approving this Settlement, ECF No. 414 at 6, 19-21, Mr. Seroka nonetheless believes that he should be "fully reimburse[d] for [his] damages." *Id.* Mr. Seroka's Objection should be overruled. If Mr. Seroka submits a claim for a recovery from the Settlement, the claims administrator will independently evaluate it and determine the amount of cash, if any, for which he is eligible. That amount may or may not be his full damages. But if Mr. Seroka does not bother to make a claim to determine how much money he will get, he ought not be heard to complain about the Settlement. What's more, the value of the credit and identity theft monitoring made available through this Settlement to a significant portion of the United States population cannot be overstated. *See In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. at 332 (granting final approval to data breach settlement and noting that "[t]he emphasis on this form of [credit monitoring] relief is logical because it is directly responsive to the ongoing injury resulting from the breach.").[23]

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[22] The Objection of Kevin-Durell Belmont [ECF No. 437], should be overruled for the same reason.

[23] Objector Phillip Shaffer makes a similar Objection [ECF No. 438-3, Ex. W], stating, "credit monitoring does not stop illegal use of plaintiffs' information." Mr. Shaffer misses the point. First, the companies to whom consumers provide their personal information must be deterred from failing to adequately protect the data they collect in the first place. That is how illegal use of personal information is stopped. Among other things, credit and identity theft monitoring

10. Objection of Michael Cherepko [ECF No. 438-1, Ex. E]

Mr. Cherepko's Objection to the Settlement centers around his complaint that the credit monitoring relief offered Settlement Class members in this Settlement may be "redundant" to credit monitoring offered in connection with other data breach settlements. Cherepko Obj. at 1. Mr. Cherepko's Objection fundamentally fails to understand the Settlement.

To be sure, Plaintiffs were fully aware when negotiating the Settlement with Yahoo that some Settlement Class members may already have credit monitoring. Consequently, Plaintiffs demanded, and Yahoo agreed, that Settlement Class members who already have credit monitoring qualify for "Alternative Compensation." *See* ECF No. 392-2 at 16-17. The amount of Alternative Compensation available to Settlement Class members is $100, an amount which is more than Plaintiffs' experts valued the personal information actually stolen here. *See* ECF No. 258-4 at 14-15 (Expert Declaration of Ian Ratner). What's more, a Settlement Class member's entitlement to Alternative Compensation does not depend on whether he or she actually paid for their existing credit monitoring service. Even if the Settlement Class member has credit monitoring free of charge, the class member is still entitled to Alternative Compensation. Mr. Cherepko's Objection lacks merit and should be overruled.

11. Objection of Julianna Lownsdale [ECF No. 438-1, Ex. F]

Ms. Lownsdale's Objection suggests that, while she "can't afford ID/data protection for [her]self," she does not "trust Yahoo with it," so, she concludes, she must be "excluded from compensation." Lownsdale Obj. at 1. Of course, the fact that Mr. Lownsdale cannot afford data protection supports the importance of the valuable credit and identity theft monitoring relief offered by the Settlement. Also, as explained above in response to Ms. Jewell's Objection, Yahoo will have nothing whatsoever to do with the credit and identity theft monitoring services provided to Settlement Class members, other than financing the Settlement Fund which will cover the cost for it, which will be no less than $24 million. Thus, far from being excluded from receiving

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"monitor" illegal use of personal information, provide fraud alerts, and, quite importantly, insure against identity theft – services provided by the Settlement through AllClear ID.

compensation, Ms. Lownsdale is the epitome of a Settlement Class member who would greatly benefit from the credit and identity theft monitoring made available in the Settlement. Her Objection should be overruled.

12. Objection of Jeromy Carpenter [ECF No. 438-1, Ex. G]

Mr. Carpenter's principal Objections are that: (a) not enough monetary compensation is provided to Settlement Class members; and (b) Class Counsel and the Class Representatives will obtain a "windfall." Carpenter Obj. at 1. Mr. Carpenter is, with respect, wrong on both counts.

First, as the Court is aware, after attorneys' fees, costs, expenses, and service awards are deducted, tens of millions of dollars will sit in a Settlement Fund available to any Settlement Class member who makes a claim for myriad types of damages, ranging from actual financial or identity theft, to time spent and out-of-pocket costs associated with addressing Yahoo's announcements of the data breaches. Settlement Class members with actual damages from the data breaches are eligible to claim up to $25,000 in reimbursement, ***150% greater*** than made available in *Anthem*. Credit and identity theft monitoring is only one part of the overall benefit made available to Settlement Class members in the Settlement. To be sure, while Mr. Carpenter may be correct that "losses due to this data breach . . . are difficult to quantify and account for," *id.*, this fact strongly supports, rather than detracts from, the importance of granting approval to the Settlement. Simply stated, that Yahoo account holders may have difficulty linking their damages to any of the Yahoo data breaches, demonstrates that the risks Plaintiffs faced in this case were enormous and cannot be overstated. Absent this Settlement, those risks very well may have resulted in ***no recovery for the Settlement Class at all***. *See Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 963 (9th Cir. 2009) (explaining that "the risk, expense, complexity, and likely duration of further litigation" and "the risk of maintaining class action status throughout the trial" are factors that the district may look at in determining the fairness of a class action settlement).

Second, like Mr. Catel, Mr. Carpenter argues in conclusory fashion that "the sum of money is far too little and not enough." Carpenter Obj. at 1. This bare assertion that the Settlement does not provide enough compensation fails to meet Mr. Carpenter's burden to show that the Settlement

is unfair or unreasonable. *See Hanlon*, 150 F.3d at 1027; *In re Google Referrer Header Priv. Litig.*, 87 F. Supp. 3d at 1137; *Schechter*, 2014 WL 2094323, at *2.[24]

Finally, Mr. Carpenter's Objection that Class Counsel and the Class Representatives would receive an improper "windfall" from this Settlement is unpersuasive. As Plaintiffs explain in their application for an award of attorneys' fees, expenses, and service awards, ECF No. 416, and as further explained above, Class Counsel's fee request sits closely to the benchmark the Ninth Circuit has found to be appropriate in common fund cases, is less than a 1.5 multiplier to Class Counsel's lodestar,[25] and the service awards sought for the Class Representatives are clearly in line with precedent in this Circuit.[26]

13. Objection of Mark Wagner [ECF No. 438-1, Ex. H]

At base, Mr. Wagner's Objection is a short diatribe on the purported contemptibility of class action litigation generally. Wagner Obj. at 1. The Supreme Court has explained that "one of the major goals of class action litigation [is to] to simplify litigation involving a large number of class members with similar claims," *Devlin v. Scardelletti*, 536 U.S. 1, 10 (2002), and former Judge Posner once aptly commented that class actions serve a useful purpose as "the *realistic* alternative to a class action is not 17 million individual suits, but zero individual suits, as only a lunatic or a fanatic sues for $30." *Carnegie v. Household Int'l, Inc.*, 376 F.3d 656, 661 (7th Cir. 2004) (emphasis in original). Indeed, noted conservative academic Professor Brian T. Fitzpatrick of Vanderbilt Law School recently authored an entire book explaining how the class action vehicle is the only form of private enforcement possible because the harms are too small for anyone to sue on their own. Brian T. Fitzpatrick, *The Conservative Case for Class Actions* (Univ. of Chicago

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[24] The last Objection received, from Sarah Tuel [ECF No. 441-1, Ex. Z], raises the same "Yahoo is not paying enough" arguments as Mr. Carpenter, also without attempting to meet her burden to demonstrate how much more Yahoo should have to pay to make the Settlement fair. Indeed, given the amount of time Ms. Tuel appears to have spent addressing the breaches, and the fact that Settlement Class members are eligible to receive up to $25,000, including $25 per hour spent, it's unclear why Ms. Tuel did not file a claim form.

[25] For the same reason, the Objection of Steven Kent Lucker [ECF No. 425] also fails.

[26] Objector Charles Thimmesch makes an identical Objection [ECF No. 438-3, Ex. V], which should also be overruled.

Press 2019). Class action lawsuits like this one afford consumers with few alleged damages and virtually no power over behemoth corporations such as Yahoo to obtain some measure of relief and accountability. As far as Class Counsel know, not a single Yahoo account holder sued Yahoo on an individual basis in the immediate aftermath of the data breach announcements. That fact says a lot about the importance of this class action and the resulting Settlement.

Mr. Wagner's more specific Objection, concerning Class Counsel's fee request, has been thoroughly addressed in Plaintiffs' fee application and accompanying papers, including the expert declaration of Professor Geoffrey P. Miller of NYU Law School, who has opined that Class Counsel's fee request is reasonable under several benchmarks. Mr. Wagner's Objection should be overruled.

14. Objection of Vivian Saegesser [ECF No. 438-1, Ex. I]

Ms. Saegesser objects to the Settlement insofar as it provides credit and identity theft monitoring "YEARS after the security breach, which isn't useful." Saegesser Obj. at 1. Ms. Saegesser's opinion, it seems, is that "when PII is stolen, it is typically used quickly, before the breach is noticed." *Id.* Respectfully, Ms. Saegesser is wrong. *See, e.g.*, Nicole Martin, *Your Data On The Dark Web Could Destroy Your Credit Years From Now*, FORBES (Oct. 23, 2019) (stating that "[h]ackers can wait years to utilize that data and hit your credit when you least expect it to occur," and noting that, for example, "[i]n 2012, LinkedIn had a data hack of over 100 million usernames and passwords compromised and this included Facebook's CEO Mark Zuckerberg. However, his information and credentials for LinkedIn were not utilized by the hackers until 2016."), https://www.forbes.com/sites/nicolemartin1/2019/10/23/your-data-on-the-dark-web-qa-with-imageware-systems-cto-david-harding/#455925326c92 (last visited Feb. 16, 2020); *see also* Declaration of James Van Dyke, MBA, BS, AA [ECF No. 258-5, ¶35] ("with many of these [Yahoo account] credentials being of a persistent nature (in contrast to private data such as various payment card digits or other financial account numbers), this risk will be of a particularly lasting nature."); *id.*, ¶32 ("With hackers having access to the average Yahoo email user's account, individuals or well-organized teams in the US or abroad can access files from anywhere and take their time to comb through messages potentially containing Social Security numbers, payment card

accounts, phone accounts (which are sometimes used by banks or merchants to verify identities), and more.").

15. Objections of Catherine and Marc Garrett [ECF Nos. 438-1, Ex. J, 438-2, Ex. K]

Mr. and Mrs. Garrett each served Objections to the Settlement. Both Objections center around their claim that the "harm done" from the Yahoo data breaches "is not adequately covered by the compensation in the Settlement." M. Garrett Obj. at 1; C. Garrett Obj. at 1. Mr. Garret attempts to calculate the "harm done" to him, claiming total damages in the amount of $760,190.00. M. Garrett Obj. at 2. Mrs. Garrett does not attempt such a calculation. In any event, the Garretts' Objections lack merit and should be overruled for two principal reasons. ***First***, if Mr. Garrett believes Yahoo harmed him in the amount of over $760,000, the proper course of action for Mr. Garrett was to opt out of the Settlement Class and file his own suit against Yahoo. *See Torrisi*, 8 F.3d at 1378 ("If [objectors] were dissatisfied, they could opt out of the class. This opportunity to opt out after knowing the terms of a proposed settlement . . . serves to protect the interests of class members."). ***Second***, the fact that the Garretts believe that more money could have been obtained from Yahoo is not only an invalid objection, *see Hanlon*, 150 F.3d at 1027 (objection that settlement could be better not valid), but ignores the fact that, absent a settlement, aggrieved Yahoo account holders could have ended up with nothing. As Plaintiffs explain in detail in their final approval papers, ECF No. 414 at 20, among other hurdles Plaintiffs faced was that, "[w]hile liability facts in this matter have always been strong, in Plaintiffs' view, the viability of any damages model, and certifiability of any damages class based on the model, was (at least) equally, inversely uncertain." Moreover, causation is an integral element of the claims and Defendants fiercely contested causation in the case, as they did in opposition to class certification and as they would have had the case gone to trial. Had this Court denied class certification of a damages class, Yahoo account holders harmed by the data breaches would have seen no recovery. Instead, here, Plaintiffs have achieved a recovery that is the second-largest data breach recovery in history and is closely aligned to the recovery in *Anthem*.

16. Objection of Dennis Chong [ECF No. 438-2, Ex. L]

Mr. Chong's sole Objection to the Settlement is that "[t]he attorneys [sic] fees and cost [sic] are excessive." Chong Obj. at 1. Plaintiffs have explained the weakness of this particular objection in response to the Objections of Messrs. Bowman and Carpenter, *supra*.

17. Objection of Leah Elliott [ECF No. 438-2, Ex. M]

Ms. Elliott posits that the Settlement "simply enriches lawyers and the credit monitoring providers," and, as a result, "the legal system is a joke." Elliott Obj. at 1. With due respect, Ms. Elliott's anger should be directed at the companies who fail to protect user data, not at the lawyers who undertake litigation on a contingent basis, invest tens of thousands of hours and significant costs in discovery and retaining experts, and tirelessly strive to obtain some measure of accountability for those companies' negligence. It may be that Ms. Elliott sits with the very small minority of people who are not concerned about companies collecting user data and then handling that data irresponsibly. Moreover, Ms. Elliott's belief that she "will get NOTHING" from the Settlement is simply wrong which is explained on the simple online claim forms, and demonstrates that Ms. Elliott fails to understand the Settlement.

18. Objections of Nancy E. McCarthy and Michael L. Brown [ECF No. 438-2, Exs. N & O]

Ms. McCarthy and Mr. Brown served identical Objections on the Settlement Administrator. Their Objections are that "the proposed settlement only lasts a few years," but, since their loss of data from the data breaches "lasts a lifetime," "[a]ny settlement should [also] last . . . a lifetime!" McCarthy/Brown Objs. at 1. These Objections, while understandable from a theoretical perspective, are meritless for several reasons. ***First***, and critically, the injunctive relief in the form of increased cyber security protection that Plaintiffs obtained in the Settlement ***does*** and ***will*** last for decades to come. As explained in Plaintiffs' final approval brief, Yahoo substantially enhanced and improved its data security because of the Settlement, including increasing its operations and investment budget for information security by hundreds of millions of dollars. ECF No. 414 at 8. ***Second***, while Ms. McCarthy and Mr. Brown may wish to have Yahoo pay for credit and identity theft monitoring services, and damages for any actual harm

caused by the data breaches, in perpetuity, this position is unreasonable. The parties agreed to settle this case to obtain finality and ensure Settlement Class members were both compensated for actual damages and protected from any future harm. Absent a Settlement, Settlement Class members could have received ***no relief at all***. Here, over $117 million has been made available to Settlement Class members, a substantial sum of money by any measure and the second-largest data-breach settlement in history. The fact that certain objectors would like to see Yahoo pay billions upon billions of dollars over the course of their "lifetimes" does not render this Settlement objectionable. *See Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982) ("It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair. This is particularly true in cases, such as this, where monetary relief is but one form of the relief requested by the plaintiffs. It is the complete package taken as a whole, rather than the individual component parts, that must be examined for overall fairness."). Further, if Ms. McCarthy and Mr. Brown truly believe that they will suffer actual, cognizable harm directly traced to the data breaches well past the expiration of the Settlement, they are free to opt-out and pursue individual claims against Yahoo when (and if) those claims may accrue.

19. Objection of Audun Huslid [ECF No. 438-2, Ex. P]

Audun Huslid's Objection raises several issues, which are addressed *seriatim*. First, Mr. Huslid says that the data breaches "should be tried and/or settled" separately. Huslid Obj. at 1. Mr. Huslid depicts the Settlement inaccurately. Plaintiffs' lawsuit is not tethered to one particular data breach, but rather concerns allegations that Yahoo's data security ***generally*** was inadequate beginning in 2012, which resulted in the data breaches. Each data breach arises out of a common nucleus of operative facts and is appropriately resolved through this aggregated litigation. *See Harvey v. Morgan Stanley Smith Barney LLC*, No. 18-CV-02835-WHO, 2020 WL 1031801, at *13 (N.D. Cal. Mar. 3, 2020) (claims should "normally be tried together" where they "derive from a common nucleus of facts").

Second, Mr. Huslid objects that Yahoo did not admit wrongdoing. Huslid Obj. at 1. Courts have never required such an admission as a precondition to settlement. *See Huffman v. Zwicker &*

Assocs., P.C., No. 1:07CV01369-LJO-SMS, 2008 WL 11385386, at *2 (E.D. Cal. Sept. 3, 2008) ("The Court finds the settlement to be fair, adequate and reasonable based upon the limitations on class liability . . . and the fact that there has been no admission of wrongdoing"); *see also Alliance To End Repression v. City of Chicago*, 561 F. Supp. 537, 554 (N.D. Ill. 1982) ("But the essential purpose of a settlement is to avoid adjudication of the lawfulness or propriety of conduct which is the subject of allegations of the complaint. It would defeat an important purpose of settlement, and therefore render settlements less attractive to the parties, if the settlement agreement were required to include admissions of wrongdoing by the defendants").[27]

Third, Mr. Huslid says that Yahoo is not being penalized enough. Huslid Obj. at 2. Evidently, Mr. Huslid believes that Yahoo should have to pay more money. As stated above, this is not a legitimate objection, particularly where Mr. Huslid fails to quantify how much more Yahoo should have to pay and why. *Hanlon*, 150 F.3d at 1027.

Fourth, Mr. Huslid complains that the Settlement does not account for "past, present, and future emotional harm." Huslid Obj. at 2. Courts have found that emotional distress caused by a data breach is too speculative to be cognizable in federal court. *Pruchnicki v. Envision Healthcare Corp.*, No. 219CV1193JCMBNW, 2020 WL 853516, at *5 (D. Nev. Feb. 20, 2020) ("plaintiff's allegations of emotional distress are insufficient to satisfy the damages element of her claims."); *In re VTech Data Breach Litig.*, No. 15 CV 10889, 2017 WL 2880102, at *4 (N.D. Ill. July 5, 2017) ("To the extent that plaintiffs are worried that other hackers may have accessed their data in a different data breach, that is the sort of speculative harm that cannot meet the injury-in-fact requirement.").

Fifth, Mr. Huslid protests that the Settlement's requirement of "documentation" is improper and there are no "safeguards to ensure [the Settlement Administrator's] professionalism, fairness and impartiality." Huslid Obj. at 2. Putting aside that there is no evidence of the Settlement Administrator's lack of independence or partiality, this Court did not hesitate to appoint

[27] This argument also dispenses with the Objection of Mitchell Schwartz [ECF No. 438-13 Ex. U] (objecting on the ground that "Yahoo needs to be punitively punished").

Heffler, and for good reason. It is a high-quality settlement administration company that has successfully administered settlements across the nation for decades. ECF No. 390 at 5. Moreover, the minimal documentation requirement, which does not even apply to all forms of available compensation, is critical to preventing fraud and abuse by unscrupulous claimants. *See, e.g.*, *In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2800-TWT, 2020 WL 256132, at *8 (N.D. Ga. Jan. 13, 2020) ("Some documentation requirements are necessary to ensure that the settlement fund is used to pay legitimate claims. Similarly, the requirement that losses be 'fairly traceable' to the breach is not onerous (and is arguably a less stringent standard than would apply at trial)."). To be sure, this Court preliminarily approved the Settlement knowing that some documentation was required, ECF No. 390, and further approved the *Anthem* settlement that required similar documentation. Mr. Huslid's Objection should be overruled.

20. Objection of Carol L. Gonzalez [ECF No. 438-2, Ex. Q]

Ms. Gonzalez's Objection is barren of details and should be overruled for this reason alone. Her arguments that she "has not received or was give [sic] the opportunity to consider the conditions of settlement nor the adequacy of those conditions," and was not given "an opportunity to discuss concerns with counsel," Gonzalez Obj. at 1, make no sense. First, to the best of Class Counsel's knowledge, Ms. Gonzalez never called them to discuss any of her (thus far unidentified) concerns. Second, it is bedrock law that class representatives are authorized to negotiate class settlements, *see* Fed. R. Civ. P. 23, not all tens of millions of absent class members, which would be impossibly unwieldy. Here, each of the Class Representatives appointed by the Court, ECF No. 390 at 4, are more than adequate to represent the Settlement Class and have consistently demonstrated their adequacy throughout this litigation. Ms. Gonzalez does not claim otherwise and, therefore, her Objection should be overruled.

21. Objection of Laurie Laskey [ECF No. 438-2, Ex. R]

Ms. Laskey begins her Objection querying whether "anyone asked for a DNS report" from Yahoo? Laskey Obj. at 1. The answer is "Yes." Plaintiffs' renowned cybersecurity expert, Mary Frantz, reviewed an abundant amount of information Yahoo produced to Plaintiffs, including information relating to DNS queries run by Yahoo's third-party investigator, Mandiant. Ms.

Laskey is also generally concerned, it appears, with the current state of Yahoo data security. *Id.* at 2-4. As Plaintiffs explain in their final approval brief, Plaintiffs obtained through the Settlement "detailed business practice changes [at Yahoo/Oath] designed to enhance the security of the Class' Personal Information," ECF No. 414 at 1, including, *inter alia*: (a) "an extraordinary 'investment' budget was allocated to improve security headcount and build new security capabilities," *id.* at 8; (b) a "vastly improved" information security employee headcount, *id.*; (c) an "align[ment of] its security program to the NIST Cybersecurity Framework" and a commitment "to undergo . . . Third-Party [maturity] assessments for four years beginning in 2019," *id.*; and (d) "enhanced intrusion and anomaly detection tools." *Id.* All of Yahoo's business practice changes, in Ms. Frantz's expert opinion, "adequately address the deficiencies [she] found within Legacy Yahoo's information security environment." *Id.* at 9 (citing ECF No. 369-29 ¶35)). Finally, Ms. Laskey is concerned that "one of the credit reporting agency's [sic]" will be providing the credit monitoring achieved in the Settlement. Laskey Obj., Ex. A at 2. As explained above, AllClear ID is a well-established company with an excellent reputation in the industry. Ms. Laskey's Objection should be overruled.

22. Objection of Seth Katz [ECF No. 438-3, Ex. T]

Mr. Katz's Objection to the Settlement is easily dispatched. Mr. Katz, who claims to be a Paid User, claims:

> There is a group (here a sub-class) of class members who are being forced to give a release of all of their claims in exchange for no compensation of any value. A class action settlement that releases claims without providing value to a group of class members should not be found to be fair by the Court overseeing the class action.

Katz Obj. at 1. Mr. Katz is wrong on many levels. First and foremost, Mr. Katz cannot argue with a straight face that Paid Users are releasing their claims "for no compensation of any value." For the Paid User Class, the Settlement provides substantial monetary value in the form of reimbursement of ***up to 25%*** of the amounts paid Yahoo for Paid User services between January 1, 2012 and December 31, 2016. ECF No. 369-2 at 18. This amount is likely ***well in excess*** of what members of the Paid User Class would almost surely obtain from any judgment after trial, principally because they are being compensated based on a portion of the amounts they paid for

ad-free Yahoo services based on Yahoo's alleged failure to adequately safeguard their Personal Information, even though (as Yahoo has vigorously argued to this Court), the security of Personal Information was a ***free service*** provided to free Yahoo users. *See, e.g.*, ECF No. 295 at 29 ("The undisputed evidence shows that Yahoo maintained ***identical*** security measures for paid users and free users.") (emphasis in original).

Furthermore, Mr. Katz raises a red herring by claiming that the Settlement's credit monitoring and Alternative Compensation structure places Settlement Class members in a "catch 22" because they may already have credit monitoring from the *Equifax* settlement, yet not be able to claim Alternative Compensation here since they do not yet have the *Equifax* credit monitoring. Katz Obj. at 2. As an initial matter, the opportunity to claim credit monitoring in this Settlement ***pre-dates*** the offer given in the *Equifax* settlement. Thus, Plaintiffs cannot be held to account for a benefit made available in a different case, before a different court, after it was offered here. Such a rule would make approval of every settlement subject to every other settlement, in every other case, that might follow it. Neither law nor logic supports such a position. Moreover, the *Equifax* settlement is also on appeal by numerous objectors, raising a question of whether and when that settlement (and its offer of seven years of credit monitoring) will be final and go into effect. Conceivably, the two years of credit monitoring offered here may well become active and run its full course before the *Equifax* proceedings come to a conclusion and that credit monitoring commences. Finally, the ability to claim Alternative Compensation from this Settlement is quite easy and does not turn on whether it pre-dates or post-dates the *Equifax* settlement offer. Instead, had Mr. Katz simply signed up for and receivedany credit monitoring program (even a free one) prior to filing his claim in this Settlement, he would have been entitled to Alternative Compensation.

23. Objection of Wilbur Hiligh [ECF No. 440, Ex. X]

Mr. Hiligh's Objection is that the "settlement has no clause for people in [his] situation, who has special damages and Common law damages based on the facts that [he] had sensitive medical and psychiatric records exposed multiple times because of the negligence of Yahoo inc. [sic] in this data breach [and] there were also multiple attorney client privilege violations." Hiligh

Obj. at 1. However, Mr. Hiligh makes no attempt to quantify the amount of his "special damages." Nor does Mr. Hiligh show how the amount of compensatory recovery in this Settlement is lower than what he would presumably recover if he were to litigate his claims for "special damages" on an individual basis. As explained above in response to several other Objections, simply arguing that one is deserving of more money fails to meet an objector's burden to show that the Settlement is unfair or unreasonable. *In re Google Referrer Header Priv. Litig.*, 87 F. Supp. 3d at 1137; *Schechter*, 2014 WL 2094323, at *2; *see also Hanlon*, 150 F.3d at 1027. What's more, Mr. Hiligh was obviously aware of the Settlement and his right to opt out of the Settlement Class if he believed that he was entitled to more compensation for his "special damages." That Mr. Hiligh chose not to exercise his right to opt out, *Torrisi*, 8 F.3d at 1378, demonstrates that he likely understands that proving his "special damages" would be exceptionally difficult – a fact that only serves to buttress the risks inherent in further litigation should this Settlement not receive approval.

24. Objection of Paul Taylor [ECF No. 440, Ex. Y]

Mr. Taylor's Objection to the Settlement is, respectfully, difficult to comprehend. To the best of Plaintiffs' understanding, Mr. Taylor believes that Settlement Class members should receive some sort of "tax credit" as part of the Settlement. Taylor Obj. at 1. Unfortunately for Mr. Taylor, neither Plaintiffs nor Yahoo have the authority to issue such a tax credit as part of the Settlement. Only the U.S. Government can.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court overrule each of the Objections to the Settlement.

DATED: March 19, 2020

MORGAN & MORGAN
COMPLEX LITIGATION GROUP
John A. Yanchunis

s/John A. Yanchunis
John A. Yanchunis

201 N. Franklin Street, 7th Floor
Tampa, FL 33602
Telephone: 813/223-5505
813/223-5402 (fax)

ROBBINS GELLER RUDMAN
& DOWD LLP
Stuart A. Davidson

s/Stuart A. Davidson
Stuart A. Davidson

120 East Palmetto Park Road, Suite 500
Boca Raton, FL 33432
Telephone: 561/750-3000
561/750-3364 (fax)

CASEY GERRY SCHENK FRANCAVILLA
BLATT & PENFIELD LLP
Gayle M. Blatt
110 Laurel Street
San Diego, CA 92101
Telephone: 619/238-1811
619/544-9232 (fax)

TADLER LAW LLP
Ariana J. Tadler
One Pennsylvania Plaza, 36th Floor
New York, NY 10119
Telephone: 212/946-9300

LOCKRIDGE GRINDAL NAUEN P.L.L.P.
Karen Hanson Riebel
100 Washington Ave. South, Suite 2200
Minneapolis, MN 55401
Telephone: 612/339-6900
612/339-0981 (fax)

ROBINSON CALCAGNIE, INC.
Daniel S. Robinson (244245)
19 Corporate Plaza Dr.
Newport Beach, CA 92660
Telephone: 949/720-1288
949/720-1292 (fax)

Attorneys for Plaintiffs and Proposed Settlement Class Counsel

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on March 19, 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 all ECF participants.

s/Stuart A. Davidson

STUART A. DAVIDSON

ROBBINS GELLER RUDMAN
& DOWD LLP
120 East Palmetto Park Road, Suite 500
Boca Raton, FL 33432
Telephone: 561/750-3000
561/750-3364 (fax)
E-mail: sdavidson@rgrdlaw.com