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Aabaco Small Business, LLC

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION**

IN RE: YAHOO! CUSTOMER DATA  
SECURITY BREACH LITIGATION

CASE NO.: 16-MD-02752-LHK

**FOURTEENTH JOINT CASE  
MANAGEMENT CONFERENCE  
STATEMENT**

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[DRAFT]

1 Plaintiffs, along with Defendants Yahoo! Inc. (“Yahoo”) and Aabaco Small  
2 Business, LLC (together, “Defendants”), having met and conferred, hereby provide  
3 this Fourteenth Joint Case Management Statement, as directed by the Court, (ECF No.  
4 272).

### 5 **DISCOVERY UPDATE**

6 As directed by the Court (ECF No. 148), the parties hereby provide a brief  
7 update on discovery, which continues to progress:  
8

#### 9 **A. Document Productions**

10 To date, Defendants have produced 650,029 documents totaling approximately  
11 9.05 million pages. Following the parties’ August 8, 2018, Thirteenth Joint Case  
12 Management Conference Statement (ECF No. 270), Defendants and non-parties  
13 produced the following:

- 14 • On August 29, 2018 and August 30, 2018, Defendants produced 8 data  
15 files in native format, consisting of the output associated with custom  
16 scripts prepared by Defendants’ expert Dr. Whipple as identified in his  
17 August 31, 2018 Declaration.;
- 18 • On August 31, 2018, non-party Ronald Bell (former Yahoo General  
19 Counsel) produced 76 documents totaling 1,970 pages, in response to  
20 Plaintiffs’ subpoena *duces tecum*.

#### 21 **B. Privilege Logs**

22 On August 8, 2018, Magistrate Judge Cousins held a hearing regarding the  
23 parties’ joint statement concerning the propriety of Defendants’ privilege logs. As a  
24 result, Magistrate Judge Cousins set a briefing schedule on the facial deficiencies  
25 portion of the letter. Briefing on that issue is now complete, (ECF Nos. 276, 283,  
26 289), and the matter is set for hearing on September 12, 2018, (ECF No. 268).  
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[DRAFT]

1 Magistrate Judge Cousins previously denied Plaintiffs' motion regarding the  
2 applicability of the crime fraud exception to the attorney-client privilege without  
3 prejudice, allowing Plaintiffs to raise the issue again after the September 12th hearing  
4 via a renewed request with briefing and additional evidence. Tr. at 47:24-48:4.

5 Plaintiffs have also engaged with Sidley Austin regarding the production and/or  
6 logging of certain documents relating to the investigation undertaken by Sidley for the  
7 Special Cybersecurity Review Committee of the Yahoo Board of Directors. On  
8 August 10, 2018, Plaintiffs and Sidley reached an agreement for the production or  
9 logging of certain documents. Production has not yet occurred.

### 11 **C. Depositions**

12 Deposition discovery continues to move forward. Former Yahoo Chief  
13 Information Officer Jay Rossiter was deposed on August 16<sup>th</sup>. Plaintiffs' class  
14 certification experts were also recently deposed: James Van Dyke on August 21<sup>st</sup>, Ian  
15 Ratner on August 24<sup>th</sup>, Mary Frantz on August 27<sup>th</sup>, and Gary Parilis on August 28<sup>th</sup>.  
16 Plaintiffs have also coordinated the depositions of Yahoo's former General Counsel  
17 Ron Bell on September 12<sup>th</sup>, and Yahoo's former President and CEO Marissa Mayer  
18 on October 9<sup>th</sup> (as directed by Judge Cousins).<sup>1</sup> Coordination of these depositions has  
19 been taken in conjunction with counsel in the parallel state court action and counsel  
20 for the individual witnesses. Plaintiffs have noticed the deposition of David Filo and  
21 are working to coordinate a date with the witness and all involved counsel.

22 Plaintiffs are in the midst of negotiations with Ms. Mayer's counsel regarding  
23 the scope and process for her document production, which issues have previously  
24 been the subject of dispute. (ECF No. 280). While always hopeful of amicable  
25 resolution, Plaintiffs believe further judicial involvement may be required.

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28 <sup>1</sup> See (ECF No. 286).

**CLASS CERTIFICATION UPDATE**

Pursuant to the Court’s Order Amending Case Management Schedule, (ECF No. 207), Defendants filed their response to Plaintiffs’ Motion for Class Certification and *Daubert* motions on August 31, 2018. Plaintiffs are preparing their responsive filings, due September 21, 2018.

**MEDIATION**

The parties—in concert with counsel in the parallel state court action—held their first mediation session on August 14, 2018, with the Honorable Daniel Weinstein (Ret.) of JAMS. A second session is scheduled for September 7, 2018.

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Dated: September 5, 2018

**MORGAN & MORGAN**

By: /s/ John Yanchunis  
John Yanchunis  
Plaintiffs’ Lead Counsel

Dated: September 5, 2018

**HUNTON ANDREWS KURTH LLP**

By: /s/ Ann Marie Mortimer  
Ann Marie Mortimer  
Attorneys for Defendants  
Yahoo! Inc. and  
Aabaco Small Business, LLC

**ATTESTATION**

I hereby attest that each of the other signatories concurs in the filing of this document.

Dated: September 5, 2018

By: /s/ John Yanchunis  
John Yanchunis

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