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Plaintiffs' Lead Counsel

17 **UNITED STATES DISTRICT COURT**

18 **NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION**

19
20 IN RE: YAHOO! CUSTOMER DATA
SECURITY BREACH LITIGATION

CASE NO.: 16-MD-02752-LHK

**JOINT RESPONSE TO ORDER
REQUIRING SUPPLEMENTATION**

1 Plaintiffs moved for preliminary approval of the class action settlement reached by the
 2 parties in this matter on October 22, 2018. (ECF No. 330).¹ On November 2, 2018, this Court
 3 entered an order requiring the parties to supplement the record regarding nine issues raised by the
 4 Court, (ECF Nos. 333, 334) (“First Supplementation Order”). On November 5, 2018, this Court
 5 entered a second order seeking additional supplemental information, (ECF No. 335) (“Second
 6 Supplementation Order”) (collectively, “Supplementation Orders”). Pursuant to the Supplementation
 7 Orders, the parties provide the following responses.

8 **(1) Any differences between the settlement class and the classes proposed in the**
 9 **operative complaint and an explanation as to why the differences, if any, are**
 10 **appropriate.**

11 Plaintiffs’ First Amended Consolidated Class Action Complaint (“FAC”) alleged four
 12 classes:

- 13 • **The United States Class:** comprised of all persons who registered for free Yahoo
 14 accounts in the United States and whose PII was accessed, compromised, or stolen
 15 from Yahoo in the 2013 Breach, the 2014 Breach, or the Forged Cookie Breach;
- 16 • **The Israel Class:** comprised of all persons who registered for Yahoo accounts in the
 17 country of Israel and whose PII was accessed, compromised, or stolen from Yahoo in
 18 the 2013 Breach, the 2014 Breach, or the Forged Cookie Breach;
- 19 • **The Paid User Class:** comprised of all persons who registered for paid Yahoo
 20 accounts (e.g., “adfree” accounts or other accounts requiring the user to pay money to
 21 Yahoo, but excluding Yahoo or Aabaco Small Business Accounts) in the United
 22 States and Israel and whose PII was accessed, compromised, or stolen from Yahoo in
 23 the 2013 Breach, the 2014 Breach, or the Forged Cookie Breach; and
- 24 • **The Small Business Class:** comprised of all persons who registered for Yahoo Small
 25 Business or Aabaco accounts in the United States and whose PII was accessed,
 26

27 _____
 28 ¹ Unless otherwise noted, all capitalized terms used herein retain the definitions attributed to them in the Memorandum in Support of the Motion for Preliminary Approval (ECF No. 330-1) and the Settlement Agreement and Release, (ECF No. 330-3).

1 compromised, or stolen from Yahoo or Aabaco in the 2013 Breach, the 2014 Breach,
2 or the Forged Cookie Breach.

3 (ECF No. 179, ¶ 161) (hereinafter, collectively “Alleged Classes”).² The 2013 Breach impacted all
4 Yahoo accounts then in existence, approximately 3 billion accounts. (*Id.*, ¶¶ 4-5, 12-13).³ Yahoo
5 conceded that the 2014 Breach compromised 500 million accounts, (*id.*, ¶¶ 4, 10), and that the
6 Forged Cookie Breach impacted 32 million accounts, (*id.*, ¶ 6).

7 The Settlement Class includes: “All U.S. and Israel residents and small businesses with
8 Yahoo accounts at any time during the period of January 1, 2012 through December 31, 2016,
9 inclusive” (ECF No. 330-1 at 13; ECF No. 330-3, § 1.43).

10 Both the classes as alleged in the FAC and the Settlement Class exclude Defendants and
11 judicial staff, and the Settlement Class also excludes those that timely opt-out. *See* (ECF No. 179,
12 ¶ 164; ECF No. 330-3, § 1.43)

13 The Settlement Class was purposefully designed to offer benefits to all Yahoo account
14 holders in the US and Israel whose accounts may have been compromised within the operative time
15 frame. Because the 2013 Breach impacted all then existing accounts anywhere in the world, all U.S.
16 and Israeli free, paid, and small business users at the time of the 2013 Breach were members of the
17 Alleged Classes and, likewise, are included in the Settlement Class’s definition. Similarly, any of
18 the 500 million impacted accounts in the U.S. or Israel from the 2014 Breach will fall within the
19 Settlement Class.

20 Also included, however, are users that are not necessarily identified as having fallen within
21 one of the defined incidents, but, based on Plaintiffs’ review of discovery accounts may have been
22 vulnerable earlier due to the attackers’ presence in the Yahoo network. Specifically, Plaintiffs’
23

24 _____
25 ² Plaintiffs also alleged a California Subclass consisting of all persons in California who registered
26 for Yahoo accounts and whose PII was accessed, compromised, or stolen from Yahoo in the 2013
27 Breach, the 2014 Breach, or the Forged Cookie Breach. (ECF No. 179, ¶ 163).

28 ³ As explained in the response to the Court’s third inquiry, while 3 billion accounts were impacted
by the 2013 Breach, this figure is a worldwide number—and hence larger than the U.S. and Israeli
classes alleged—and also relates to impacted *accounts*, as opposed to impacted underlying *users*. As
any given user might have multiple accounts, the number of actual, underlying, individual users is
smaller than the number of accounts.

1 cybersecurity expert Mary Frantz detailed in her report that beginning in at least 2012, Yahoo
 2 suffered from multiple intrusions, from multiple bad actors, which likely resulted in loss of user data
 3 or misuse of user accounts. Class Cert. Memo, Ex. 93 at 14–15, 36, 38-39, 44-54. All such users
 4 will be entitled to the relief made available through the settlement given that they were potentially
 5 impacted.

6 **(2) Any differences between the claims to be released and the claims in the operative**
 7 **complaint and an explanation as to why the differences are appropriate.**

8 The claims to be released are based on those litigated in this case. “Released Claims” are
 9 defined as:

10 any claim, liability, right, demand, suit, obligation, damage, including
 11 consequential damage, loss or cost, punitive damage, attorneys’ fee and
 12 cost, action or cause of action, of every kind or description— whether
 13 known or Unknown (as the term “Unknown Claims” is defined herein),
 14 suspected or unsuspected, asserted or unasserted, liquidated or
 15 unliquidated, legal, statutory, or equitable—related to or arising from any
 16 of the facts alleged in any of the Actions.

17 (ECF No. 330-3, § 1.39). The parties mutually release each other from the Released Claims. (*Id.*,
 18 §§ 13.1-13.3).

19 This construction comports with precedent permitting the release of claims in class cases
 20 “based on the identical factual predicate as that underlying the claims in the settled class action.”
 21 *Hesse v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir. 2010) (quoting *Williams v. Boeing Co.*, 517 F.3d
 22 1120, 1133 (9th Cir. 2008)); *see also Rey’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 748
 23 (9th Cir. 2006) (“The weight of authority holds that a federal court may release not only those claims
 24 alleged in the complaint, but also a claim ‘based on the identical factual predicate as that underlying
 25 the claims in the settled class action....’”) (quoting *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268,
 26 1287-89 (9th Cir. 1992)); *In re: Cathode Ray Tube (Crt) Antitrust Litig.*, No. C-07-5944 JST, 2016
 27 WL 3648478, at *14 (N.D. Cal. July 7, 2016) (Tigar, J.), dismissed sub nom. *In re Cathode Ray*
 28 *Tube (CRT) Antitrust Litig.*, No. 16-16368, 2017 WL 3468376 (9th Cir. Mar. 2, 2017) (same).

1 Moreover, this definition of “Released Claims” is similar to that routinely approved as
2 appropriate in class actions based on data breaches and other claims, including those in this Court.
3 *See In re Anthem, Inc. Data Breach Litig.*, 15-MD-02617-LHK, 2018 WL 3872788, at *20 (N.D.
4 Cal.) (“The breadth of the release in the Settlement Agreement is commensurate with that legal
5 standard: it covers ‘any claim, liability, right, demand, suit, obligation, damage, including
6 consequential damages, losses or costs, punitive damages, attorneys' fees and costs, actions or causes
7 of action, of every kind or description ... related to or arising from any of the facts alleged in any of
8 the Actions.’”).

9 As explained above, to the extent the Settlement Class is incrementally broader than the
10 Alleged Classes, all such Yahoo users are eligible for compensation from the Settlement Fund,
11 regardless of whether their account information was found—or extrapolated from—the data shards
12 defining the 2013 and 2014 Breaches.

13 **(3) An explanation of the calculation of the number of class members. Plaintiffs had**
14 **asserted that this case involved over 3 billion user accounts. In the Motion, the parties**
15 **represent that the settlement class involves nearly a billion user accounts and**
16 **approximately 200 million individuals. How were those numbers calculated? For each**
17 **of the 2013 Breach, 2014 Breach, and 2015-2016 Breach, what are the number of**
18 **accounts and individuals involved with each breach, and how are these numbers**
19 **calculated?**

20 Yahoo’s announcement that the 2013 Breach impacted approximately 3 billion accounts
21 reflected the total number of impacted accounts worldwide. Several factors impact the reduction of
22 that overall number here:

23 First, while Plaintiffs attempted to assert claims on behalf of users in multiple countries in the
24 initial consolidated complaint—specifically, the United States, Australia, Venezuela, Spain, and
25 Israel, (ECF No. 80. ¶ 105)—all but the United States and Israeli classes were dismissed by this
26 Court in its first motion to dismiss order, (ECF No. 132 at 84-88). Accordingly, the Settlement
27 Class here relates only to United States and Israeli users. Moreover, as discovery has revealed, the 3
28 billion figure represents the number of impacted accounts, not the number of underlying, individual

1 users; and many users had multiple accounts.

2 As noted in Plaintiffs' Motion for Class Certification, the 2014 Breach affected 194,844,370
3 U.S. accounts (Class Cert. Mtn., Ex. 11 at 919), including 134,746 paid user accounts and 31,771
4 Aabaco accounts in the U.S., and 224 paid user accounts and 64 Aabaco accounts in Israel, (Class
5 Cert. Mtn., Ex. 12 at 9). The 2013 Breach impacted 859,596,677 U.S. accounts (Class Cert. Mtn.,
6 Ex. 11 at 919), including 866,316 paid user accounts and 339,871 Aabaco accounts in the U.S., and
7 1,356 paid user accounts and 604 Aabaco accounts in Israel, (Class Cert. Mtn., Ex. 12 at 7). The
8 Forged Cookie Breach impacted 6,536,556 U.S. accounts (Class Cert. Mtn., Ex. 11 at 919),
9 including 68,650 paid user accounts and 9,140 Aabaco accounts in the U.S., and 109 paid user
10 accounts and 12 Aabaco accounts in Israel, (Class Cert. Mtn., Ex. 12 at 10). The above numbers
11 were derived from responses provided by Yahoo in discovery and comport with data available to
12 Yahoo.

13 Yahoo did not track or maintain data regarding the number of actual individuals that used
14 Yahoo Mail as distinguished from the number of active accounts. As Yahoo pointed out in its class
15 certification opposition filed with the Court, which attached the deposition transcripts of named
16 Plaintiffs and a sworn declaration of an employee with knowledge, some users had multiple
17 accounts. Also, the account information in many instances could not be linked to specific
18 individuals for a number of reasons including because in millions of cases users provided no names,
19 provided the names of fictional characters, and/or otherwise provided obviously false
20 information. Moreover, the number of affected accounts substantially exceeds the U.S. population,
21 which in 2013 was only 316,128,839. Under the Yahoo! TOS, minors under the age of 13 were
22 ineligible to create a Yahoo accounts. (ECF No. 175-6, § 3). According to census data, there were
23 56,835,475 individuals that were then under the age of 14 in the United States. In addition, CDC
24 data indicates that there were 2,712,630 reported deaths in the U.S. in 2015. Thus, the starting point
25 for the number of potential eligible class members, assuming 2,500,000 deaths a year since 2013, is
26 no more than 247,000,000 once you subtract minors and decedents. The parties conservatively
27 estimate that approximately 80% of the US population had some type of Yahoo account during the
28 period yielding a potential class size of 200 million, though not all would have been email users (i.e.

1 some used other Yahoo properties such as Flickr, Tumblr, and Yahoo Sports). The table below
2 reflects the calculations:

| | | |
|---|--------------------------------------|-------------|
| 3 | Approximate US Population in 2013 | 316,000,000 |
| 4 | Subtract Minors under 14 | 57,000,000 |
| 5 | Subtract Decedents | 12,500,00 |
| 6 | Apply 80% Estimate for Yahoo Account | 197,200,000 |
| 7 | Holder | |

8
9 **(4) The anticipated class recovery under the settlement, the potential class recovery if**
10 **plaintiffs had fully prevailed on each of their claims, and an explanation of the factors**
11 **bearing on the amount of the compromise.**

12 The Settlement Class will recover the entire \$50 million Settlement Fund. No portion of the
13 \$50 million Settlement Fund will revert to Defendants, or be used to fund any other portion of the
14 Settlement. Should Out-of-Pocket, Paid User, Small Business User, and Alternative Compensation
15 claims not exhaust the Settlement Fund, the additional amounts will be used to increase the amount
16 of the Alternative Compensation payments up to the two-year retail value of the Credit Monitoring
17 Services, then to purchase up to five additional years of Credit Monitoring Services, and finally as
18 directed by the Court. (ECF No. 330-3, § 7).

19 In addition, all Settlement Class Members are entitled to two years of Credit Monitoring
20 Services, to be paid for separately by Yahoo, with a retail value of \$358.80 per individual. The
21 availability of credit monitoring is not capped by a specific dollar amount, but is available to all
22 Settlement Class Members in the US and will not diminish the fund at all. The costs of providing
23 notice to the Settlement Class, and administering the Settlement will also be separately funded by
24 Yahoo. Likewise, Service Awards for the Settlement Class Representatives, and Attorneys' Fees,
25 Costs, and Expenses are being separately paid by Defendants and will not deplete, in any way, the
26 \$50 million Settlement Fund.

27 Plaintiffs allege their potential recovery, had they fully prevailed, occupies a broad spectrum.
28 In connection with this case Plaintiffs retained several experts to opine, among other things, on

1 damages incurred by class members. Plaintiffs' expert James Van Dyke—leveraging consumer
2 survey results—was able to determine the types of personal information in consumers' accounts and
3 proposed a method for valuing that information on a class wide basis. (Class Cert. Mtn., Ex. 94

4 ¶¶ 13, 15, 18-35, 66-77).

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

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[REDACTED]

Discovery in this case indicated that there were approximately [REDACTED]⁴ million active accounts on a month over month basis during the pendency of this litigation—meaning accounts that had sent (not just received) at least an email. The \$50 million Settlement Fund alone, then, provides a cash recovery of approximately [REDACTED] per active user. This, however, does not account for the value of

⁴ See 2016 Adestra Consumer Adoption & Usage Study, <https://www.adestra.com/resources/2016-consumer-adoption-usage-study/>.

1 the credit monitoring which is \$358.80 per US user and, is not subject to a cap, unlike other
 2 settlements including *Anthem*. Likewise, assuming a Settlement Class of 200 million individuals,
 3 the \$50 million Settlement Fund provides a cash recovery of 25% of the anticipated potential full
 4 recovery under one of the possible damage models that could have been pursued at trial—even if
 5 ignoring the very significant benefits provided by the Settlement in the form of business practice
 6 changes and Credit Monitoring Services—a figure well within the range of reasonableness given the
 7 risks associated with this type of case, and the difficulty Plaintiffs faced in certifying a damages
 8 class. *See, e.g., Destefano v. Zynga, Inc.*, 12-CV-04007-JSC, 2016 WL 537946, at *11 (N.D. Cal.
 9 Feb. 11, 2016) (approving settlement where, following deductions for attorneys’ fees and costs and
 10 administration costs, the payout to the Settlement Class was approximately 9.5 percent of the likely
 11 recoverable damages); *In re Celera Corp. Sec. Litig.*, 5:10-CV-02604-EJD, 2015 WL 7351449, at *6
 12 (N.D. Cal. Nov. 20, 2015) (granting final approval on a settlement fund of \$24,750,000, which
 13 represented 17 percent of the plaintiff’s total estimated damages with a per-share recovery of \$1.02);
 14 *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (granting final approval
 15 of a settlement fund of \$13.75 million where the gross class recovery was 9 percent of maximum
 16 potential recovery, which totaled 6 percent after deductions for attorneys’ fees and costs); *see also*
 17 *Nat’l Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004)
 18 (“[I]t is well-settled law that a proposed settlement may be acceptable even though it amounts to
 19 only a fraction of the potential recovery that might be available to the class members at trial.”).

20
 21 **(5) An estimate of the number and/or percentage of class members who are expected to**
 22 **submit a claim in light of the experience of the selected claims administrator and**
 23 **counsel from other recent settlements of similar cases, the identity of the examples used**
 24 **for the estimate, and the reason for the selection of those examples. This information**
 25 **should be provided for each type of claim, e.g. claim for out-of-pocket costs, paid user**
 26 **costs, small business user costs, credit monitoring, and alternative compensation.**

27 As noted above, out-of-pocket costs claims-rates in large, consumer data breach cases
 28 consistently track at from below one percent to three percent. The claims rates in *Target, Home*

1 *Depot*, and *Anthem* fell within this range. See, e.g., *In re Anthem, Inc. Data Breach Litig.*, 15-MD-
2 02617-LHK, 2018 WL 3872788, at *13 (N.D. Cal. Aug. 15, 2018) (noting a 1.8% claims rate for the
3 *Anthem* class, and “claims rates of approximately 0.2% and 0.23% in the *In re Home Depot* and *In re*
4 *Target* data-breach actions”); *In re the Home Depot, Inc., Customer Data Sec. Breach Litig.*, No.
5 1:14-MD-02583-TWT, ECF No. 245-1 (N.D. Ga.) (noting submission of 127,527 claims for a class
6 of approximately 40,000,000 individuals, a rate of .31%).

7 Those cases were chosen as appropriate comparators because they were each large, well-
8 publicized consumer data breach cases, with tens of millions of class members, as is the case here.

9 The credit monitoring claims rate in *Anthem* was 1.6%. *Anthem*, 15-MD-02617-LHK, ECF
10 No. 1007 at 7. The credit monitoring claims rate in *Home Depot* was less than 1%.

11 *Anthem* is the only comparator case offering an alternative compensation option in place of
12 credit monitoring. The claims-rate for that relief in *Anthem* was approximately 0.2%. *Anthem*, 15-
13 MD-02617-LHK, ECF No. 1007 at 7.

14 Experience with paying user type claims is significantly more limited. However, *In re*
15 *Linkedin User Privacy Litig.*, 309 F.R.D. 573, 589 (N.D. Cal. 2015), dealt with a similar paying-
16 user, data breach class, and resulted in 47,336 claims out of a class of approximately 798,000; a rate
17 of 5.9%.

18 Heffler’s experience with large, consumer data breach class cases is reflective of this
19 approximate rate as well.

20 The parties expect a similar range of claims-rates here for the various forms of relief.
21 Specifically, the parties anticipate an approximately three percent claims rate for Out-of-Pocket
22 Costs and one to two percent claims rate for credit monitoring services. The Parties do expect a
23 more robust claims-rate for alternative compensation in this case than seen in *Anthem*, due to the
24 much larger amount being offered, likely in the one to three percent range. Finally, the parties
25 anticipate a four to eight percent claims-rate for Paid and Small Business Users.

26
27 **(6) An explanation for why claim forms can only be submitted for 270 calendar days**
28 **after preliminary approval.**

1 The parties believe a 270 days Claims Period is sufficiently adequate to allow Settlement
2 Class Members to submit claims in this matter. Claims periods of sixty to 120 days are routinely
3 approved in class cases. *See, e.g., Nielson v. Sports Auth.*, No. C 11-4724 SBA, 2012 WL 5941614,
4 at *6 (N.D. Cal. Nov. 27, 2012) (Armstrong, J.) (“[Plaintiff] should ensure that class members are
5 afforded at least sixty days to submit claim form.”); *In re Magsafe Apple Power Adapter Litig.*, No.
6 5:09-CV-01911-EJD, 2015 WL 428105, at *4 (N.D. Cal. Jan. 30, 2015) (Davila, J.) (granting final
7 approval of class action settlement and noting that “the claim form and proof of purchase had to be
8 submitted during the claims period—120 days from the notice date”); *Lopez v. Bank of Am., N.A.*, No.
9 10-CV-01207-JST, 2015 WL 5064085, at *1 (N.D. Cal. Aug. 27, 2015) (Tigar, J.) (noting a claims
10 period of a total of 44 days for a certain category of class members).

11 The 270-day Claims Period also compares favorably with other consumer data breach
12 settlements. For example, in *In re the Home Depot, Inc., Customer Data Sec. Breach Litig.*, No.
13 1:14-MD-02583-TWT (N.D. Ga.), preliminary approval was entered on March 8, 2016, and the
14 claims deadline occurred on October 29, 2016; a claims period of 235 days. *See (Id., ECF No. 185*
15 *at 15-16)*. In *In re Target Corp. Customer Data Sec. Breach Litig.*, No. MDL 14-2522-PAM (D.
16 Minn.), preliminary approval was entered on March 19, 2015, and the claims deadline occurred on
17 July 31, 2015; a claims period of 134 days. *See (Id., ECF No. 364)*.⁵ In *In re Sony Gaming*
18 *Networks & Customer Data Sec. Breach Litig.*, 11MD2258 AJB MDD (S.D. Cal.), preliminary
19 approval was granted on July 10, 2014, however the claims period did not open until January 21,
20 2015, and the claims deadline occurred on or about August 31, 2015; a claims period of 222 days.
21 2014 WL 7800046, at *1; *id.*, ECF No. 208 at 15.

22 While the period to submit claims for reimbursement of out-of-pocket costs in *In re Anthem,*
23 *Inc. Data Breach Litig.*, 15-MD-02617-LHK (N.D. Cal.), remains open for a full year after final
24 approval, the claims period for seeking credit monitoring or alternative compensation was only 90
25 days following notice, and out-of-pocket claim payments are set to cease once all the available \$15
26

27
28 ⁵ *See also* <https://targetbreachsettlement.com/Portals/0/Documents/DetailedNotice.pdf> (long form notice stating claims deadline of July 31, 2015).

1 million in funds are paid, even if the full year has yet to pass. 2018 WL 3872788, at *6; *id.*, ECF
2 No. 869-8 §§ 4.3, 5.1, 6.4.

3 Here, all claims—Out-of-Pocket Costs, Credit Services and Alternative Compensation, Paid
4 User Costs, and Small Business User Costs—are open for 270 days following preliminary approval;
5 longer than the periods in *Home Depot*, *Target*, and *Sony*, and longer than the period for credit
6 monitoring or alternative compensation in *Anthem*. The parties believe this is a sufficient period.
7 Further, the credit monitoring offered through this settlement is designed to protect Settlement Class
8 Members from suffering additional out-of-pocket costs in the future due to any further misuse of
9 their PII. Moreover, because no claims can be paid until the Claims Period closes, (ECF No. 330-3
10 § 10.2(n)), the 270-day period provides a sufficiently long timeframe to permit claims to be
11 submitted, yet is balanced against the need to provide payments to Settlement Class Members in a
12 timely fashion.

13 Nonetheless, to the extent the Court is concerned that 270 days is too short, the parties have
14 no objection to a Claims Period of 365 days from preliminary approval.

15
16 **(7) The settlement administrator selection process, including how many settlement**
17 **administrators submitted proposals, what methods of notice and claims payment were**
18 **proposed, the Lead Counsel’s firms’ history of engagements with the settlement**
19 **administrator over the last two years, the anticipated administrative costs, and the**
20 **reasonableness of those costs in relation to the value of the settlement.**

21 Yahoo, which is paying for all Administrative Expenses separately from the \$50 million
22 Settlement Fund (ECF No. 330-3, § 10.3), was principally responsible for selection of Heffler as the
23 settlement administrator in this case. Plaintiffs’ Lead Settlement Counsel suggested three additional
24 potential administrators, from whom Yahoo solicited and obtained bids: Epiq Systems, KCC, and
25 Angeion; all well-regarded notice and claims administrators. The bids submitted by all parties were
26 sufficiently similar once normalized for services included. It is estimated that the settlement
27 administration costs will be approximately \$5 to 6 million. Heffler’s proposed notice plan for social
28 media and publication was the most robust and, therefore, favored. Heffler had been working with

1 Defendants in advance of the mediation sessions and, therefore, had a longer period of time to
2 familiarize itself with the contours of the case.

3 Plaintiffs' Lead Settlement Counsel has had a limited history of engagement with Heffler
4 over the last two years. Plaintiffs' Lead Settlement Counsel John Yanchunis was one of a number of
5 lawyers in the case of *In re TracFone Unlimited Serv. Plan Litig.*, 13-CV-03440-EMC, 2015 WL
6 13035125 (N.D. Cal. Feb. 20, 2015) which settled a nationwide class. The FTC, which also settled a
7 case arising from the conduct that was the subject of the class action, retained the notice and claims
8 administrator. The defendant in those cases retained Jeanne Finnegan—now President of Heffler's
9 HF Media division—as a notice expert to assist in the design of the notice program. Her time was
10 compensated by the defendant in Tracfone.⁶ Given the Parties' comfort with the notice plan and
11 expert Jeanne Finnegan, the fact that the costs of administration will be borne directly by Defendants
12 without impact to the established fund, Heffler was selected by Defendants without objection from
13 Plaintiffs.

14
15 **(8) Information about the lodestar calculation, including the total number of hours**
16 **billed to date, the number of billers and their hourly rates, the number of contract**
17 **attorneys or paralegals, and the requested multiplier, if any.**

18
19 Lodestar information is attached hereto as Exhibit 1.

20
21 **(9) In light of the fact that Defendants' data was breached in 2013, 2014, 2015, and**
22 **2016, an explanation of why the business practice changes appear to only originate from**
23 **Defendant and do not identify security controls and reforms recommended by**
24 **independent security experts such as Plaintiffs' security experts, if any; do not appear**

25
26 _____
27 ⁶ Although not Lead Counsel, Class Counsel Stuart Davidson, a member of the MDL Plaintiffs'
28 Executive Committee, also has a positive experience with Heffler when it served as settlement administrator in the MDL No. No. 1850, *In re Pet Food Products Liability Litigation*, No. 07-2867 (NLH) (D.N.J.), a nationwide class settlement where Mr. Davidson served as Co-Lead Class Counsel.

1 **to address data retention policies; do not appear to require specific remediation**
2 **schedules; do not require adversarial simulations; and do not provide for independent**
3 **third parties to conduct security risk assessments and wholly independent annual**
4 **settlement compliance reviews.**

5 The business practice changes outlined in Exhibit 2 of the Settlement reflect intense
6 negotiation between the Parties before, during and after the Mediation, and specifically incorporate
7 security enhancements and changes requested by Plaintiffs' expert, Mary Franz, in addition to
8 reflecting the implementation of improvements as a result of expert advice and analyses by third-
9 party security consultants during assessments and in response to incidents including the Breaches.
10 Exhibit 2 leverages recommendations from Mandiant, Stroz, Leaf SR, Dell SecureWorks and Rapid
11 7, which recommendations were considered by Plaintiffs' expert and incorporated as part of her
12 expert analysis and recommendations. The agreed to business changes were made with specific
13 reference to alleged security vulnerabilities identified in the suit and by Plaintiffs' expert in her
14 Expert Report. In addition, and as described below, Oath has engaged PwC to assist with and
15 conduct independent interviews, document collections, and security analysis in support of Oath's
16 anticipated maturity security assessment.

17 Remediation is an ongoing, iterative process, since no security is ever complete; however,
18 substantial post-remediation has been completed as noted below, and where remediation actions
19 have not already been completed, dates have been set for future action, including additional security
20 maturity assessments. Specific security enhancements recommended by Plaintiffs' expert and
21 incorporated into the negotiated business changes reflected in the Settlement Agreement not
22 previously undertaken by Yahoo include:

- 23 • Commitment to conduct a maturity assessment protocol aligned to the NIST Cybersecurity
24 Framework by [REDACTED] with the active involvement of PwC, and for which a Company
25 attestation will be provided. Oath has partnered with leading outside expert PwC to
26 undertake this future maturity assessment, and PwC has and will continue to undertake
27 independent data collection, interviews, and analysis of Oath security practices. In addition,
28 PwC has been engaged by Oath to assist in determining the type of sequencing of security

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1 projects for Oath to identify and bolster any security vulnerabilities identified. The security
2 assessments done in partnership with PwC as well as PwC's ongoing and active analysis of
3 the Oath security environment;

- 4 • Implementation of a retention plan when technically feasible for security logs, which under
5 the current system architecture include [REDACTED]

6 [REDACTED]
7 Additional remedial activities directly responsive to recommendations of independent third-

8 party security advisors and Plaintiffs' expert include:

- 9 • A Board of Advisors of leading independent security industry experts outside of the Oath
10 organization, including the President & CEO of the Center for Democracy & Technology,
11 the former Target CISO and Booz Allen EVP and leader in the firms Commercial Business,
12 the former Deputy Director for Cyber Defence Operations at GCHQ and Managing Director
13 of RedQ, and the former CISO for the CIA and President of 2BSecurek among others was
14 created by Oath. The CISO Advisory Board is designed to provide oversight, advice and
15 input on best practices on cyber-related topics, including analysis by the Board of Oath's
16 cyber-security maturity, using the NIST Cybersecurity and the Department of Energy C2M2
17 frameworks as benchmarks. The Board has already met and undertaken a comprehensive
18 analysis of Oath's current and future state security maturity;
- 19 • Increased headcount and spend for the security organization, which Plaintiffs' experts had
20 previously criticized as under-resourced;
- 21 • Direct oversight of the Oath security organization by Verizon's CISO and Audit Committee,
22 as recommended by Plaintiffs' expert;
- 23 • Enhanced training for all Oath employees, including security professionals, including role-
24 based, industry-specific training, which has previously been identified by Plaintiffs' expert as
25 a weakness of the former Yahoo organization;
- 26 • Completion of breach-specific remediation activities recommended by third-party
27 consultants and identified as contributing to the breaches by Plaintiffs' expert, including:

28 [REDACTED]

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[REDACTED]

- Although data retention and deletion for each user is ultimately guided by the Yahoo user within the framework of the Oath Terms of Service (“TOS”), Yahoo users now benefit from greatly enhanced transparency and control over data use and retention with the introduction of Oath’s privacy dashboard, which allows users to see and control how their data is used, including allowing the user to opt-out of automated analysis for activities including ad targeting. Users may also request deactivation of their accounts and deletion from the user registration database, as well as anonymization of their account data and setting across the Yahoo network, which includes the contents of their Yahoo Mail, Yahoo Messenger, Yahoo Contacts and more subject to the timeframes specified in the TOS. These measures are designed to protect user information from fraudulent activity, including unauthorized deletion;
- To assist Oath in preventing, identifying and responding to security vulnerabilities, Oath uses a specifically dedicated “Red Team” to stimulate adversarial activity in real-time to uncover security vulnerabilities and risk. The Red Team is

[REDACTED]
[REDACTED]
[REDACTED] Red Team [REDACTED]
[REDACTED] Oath [REDACTED]

has enhanced and expanded its Red Team and its activities. For example,

[REDACTED]
[REDACTED] In addition, [REDACTED]
[REDACTED]

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- In addition to the ongoing independent support provided by the CISO Advisory Board and PwC, Oath will continue to engage outside independent security resources on an as needed basis as specific security needs require.

Post-merger with Verizon, Yahoo users also benefit from a greatly enhanced security environment, as well as a security framework that includes security upgrades from AOL and Verizon best practices now incorporated into the currently existing Yahoo platform.

Second Supplementation Order No. 1) The parties represent that Defendants will establish a \$50 million settlement fund for out-of-pocket expenses of the settlement class and do not specify what Defendants will pay for any other types of settlement class claims. Plaintiffs' proposed order granting final approval of class action settlement awards Class Counsel \$35 million in attorney's fees. What is the total estimated settlement fund, what percentage of that fund is Class Counsel's requested \$35 million in fees, and why is such a percentage warranted? The parties should explain how they estimated the total settlement fund. If they relied on comparable cases for that estimate, they should identify which ones and why those are the appropriate comparators.

The amount of Attorneys' Fees was negotiated based on MDL and JCCP Counsel's lodestar, including projected additional amounts for settlement approval and appeals and a multiplier and not as a percentage of a common fund. The amount of Attorneys' Fees awarded in this matter will not, in any way, reduce the \$50 million available in the Settlement Fund (for Out-of-Pocket Costs, Alternative Compensation, Paid User Costs, and Small Business User Costs), impact the availability or scope of Credit Services that are available to all Settlement Class Members, or decrease the amounts available for notice and administration. Whatever amount this Court awards for fees will be paid wholly separate and apart from the relief provided to the Settlement Class.

1 However, the retail value of the Credit Services—as made available to the entire
2 approximately 200 million members of the Settlement Class—reaches to the tens of billions of
3 dollars in value made available to the class, and, even assuming a one percent claims-rate for Credit
4 Services, reaches into the hundreds of millions of dollars in value provided. Yahoo has negotiated a
5 fixed fee of [REDACTED] for the described services, payable by Yahoo and not from the fund.
6

7 **Second Supplementation Order No. 2) In light of the fact that Defendant’s data was**
8 **breached in 2013, 2014, 2015, and 2016, what limitations, if any, have been placed on**
9 **the uses and retention by Defendant, Class Counsel, and the Settlement Administrator**
10 **of settlement class members’ data or the data of the putative class proposed in the**
11 **original complaint?**

12
13 Consistent with the ESI protocol entered in the case, specifically, “Yahoo has advised that it
14 has preserved multiple copies of a database that contains, inter alia, the name and email addresses of
15 user accounts present at the time the preservation copy was taken, and such copy will not be
16 impacted by any user action or request to delete as described herein taken subsequent to the creation
17 of such preservation copy.” (ECF No. 74).

18 Governed by the TOS, users may request deactivation of their accounts and deletion from the
19 user registration database, as well as anonymization of their account data and setting across the
20 Yahoo network, which includes the contents of their Yahoo Mail, Yahoo Messenger, Yahoo
21 Contacts and more subject to the timeframes specified in the TOS. Each Yahoo user, therefore, can
22 maintain control over his or her digital profile. Oath Holdings, as successor to Yahoo, intends to
23 continue to interact with users and the data provided by users in a manner consistent with its TOS so
24 that users continue to have access to their email and other services. Yahoo may otherwise follow its
25 policies including those related to the deletion of accounts that have been inactive for the applicable
26 period of time pertinent to that account or Yahoo Property (which time period Yahoo will identify
27 separately) or due to violations of the applicable terms of service.
28

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1 The claims administrator Heffler has robust controls in place for any data it may
2 receive. Data is stored in a climate-controlled datacenter with security cameras and restricted key
3 access. Heffler has motion notification to IT personnel through the camera's alert system. Data
4 transfers to and from Heffler are completed through a secure web portal with credentials issued only
5 to the transmitting party. Data are retained until confirmed and then promptly removed from the
6 portal and placed into an encrypted file share. Networks are restricted and production servers are
7 segmented from external facing and test environments. Heffler has an intrusion prevention system
8 (IPS) in place on forward-facing firewalls to prevent unauthorized access to internal systems and
9 data. System security includes desktops/laptops full-disk encryption, secure e-mail/secure FTP
10 transfers, file share encryption, and database encryption.

11 All documents and other information produced to Plaintiffs in this case has been stored in a
12 secure, document review platform employing a variety of procedures and encryption methods to
13 ensure data integrity, including TLS, SFTP and AES-256 encryption. Access to that platform is
14 limited, and controlled by Plaintiffs' counsel. Consistent with the parties' protocol, Plaintiffs will
15 destroy all such data at the conclusion of the case.

16 Moreover, the various data security improvement measures discussed in response to number
17 9 above, have also been put in place at Yahoo/Oath.

1 Dated: November 9, 2018

MORGAN & MORGAN

2
3 By: John Yanchunis
4 John Yanchunis
Plaintiffs' Lead Counsel

5 Dated: November 9, 2018

HUNTON ANDREWS KURTH LLP

6
7 By: Ann Marie Mortimer
8 Ann Marie Mortimer
9 Attorneys for Defendants
10 Yahoo! Inc. and
Aabaco Small Business, LLC

11 **ATTESTATION**

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

13
14 Dated: November 9, 2018

15 By: John Yanchunis
16 John Yanchunis

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