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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ANDREW WAHL,
Plaintiff,

v.

YAHOO! INC., a Delaware corporation dba
RIVAL.COM; and DOES 1 through 10,
inclusive,
Defendants.

CASE NO. 5:17-cv-02745-BLF

~~PROPOSED~~ ORDER PRELIMINARILY
APPROVING CLASS ACTION
SETTLEMENT, PROVISIONALLY
CERTIFYING A CALIFORNIA
SETTLEMENT CLASS, APPROVING
PROPOSED NOTICE, AND SCHEDULING
A FAIRNESS HEARING

ASSIGNED FOR ALL PURPOSES TO:
HON. BETH LABSON FREEMAN

Hearing Date: July 12, 2018
Hearing Time: 1:30 p.m.
Hearing Place: Courtroom 3

Action Filed: Mar. 31, 2017
Action Removed: May 12, 2017
Trial Date: None Set

1 Upon review and consideration of the Settlement Agreement and Release, and the attachments
2 thereto, which have been filed with the Court, it is HEREBY ORDERED, ADJUDGED and
3 DECREED as follows:

4 1. The Court has carefully reviewed the Settlement Agreement and Release, as well as
5 the files, records, and proceedings to date in the above-captioned action (the “Action”). The
6 definitions in the Settlement Agreement and Release are hereby incorporated as though fully set forth
7 in this Order, and capitalized terms shall have the meanings attributed to them in the Settlement
8 Agreement and Release.

9 2. The parties have agreed to settle the Action upon the terms and conditions set forth in
10 the Settlement Agreement and Release, which has been filed with the Court. The Settlement
11 Agreement and Release, including all exhibits thereto, is preliminarily approved as fair, reasonable,
12 and adequate. Plaintiff, Yuan Guo (“Plaintiff”), in the Action, by and through his counsel, has
13 investigated the facts and law relating to the matters alleged in his complaint, including extensive
14 legal research as to the sufficiency of the claims, and an evaluation of the risks associated with
15 continued litigation, trial, and/or appeal. The settlement was reached as a result of extensive arm-
16 length negotiations between counsel for Plaintiff, on the one hand, and counsel for Defendant
17 Yahoo! Inc. (“Yahoo”)¹, on the other hand, overseen by a respected mediator—the Honorable
18 Ronald M. Sabraw, currently affiliated with JAMS. The settlement confers substantial benefits upon
19 the Settlement Class, particularly in light of the damages that Plaintiff’s and Class Counsel believe
20 are potentially recoverable or provable at trial, without the costs, uncertainties, delays, and other risks
21 associated with continued litigation, trial, and/or appeal.

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24 ¹ On or about June 13, 2017, Yahoo! Inc. transferred to Yahoo Holdings, Inc. all liabilities relevant
25 to the class action lawsuit filed by Andrew Wahl. Yahoo Holdings, Inc., a Delaware corporation
26 with an office located at 701 First Avenue, Sunnyvale, California, 94089, is a wholly owned
27 subsidiary of Verizon Communications Inc. Yahoo! Inc. no longer owns any interest in the past,
28 present, or future liabilities relevant to this action. Effective January 1, 2018, Yahoo Holdings,
Inc. changed its name to Oath Holdings Inc. For purposes of this Order, the term “Yahoo” shall
refer to the principals, agents, representatives, owners, officers, directors, employees, independent
contractors, successors, assigns, subsidiaries, parents, related entities, and affiliates of Oath
Holdings Inc., including but not limited to Yahoo! Inc. (now known as Altaba Inc.) and Oath Inc.

1 3. The Court conditionally certifies, for settlement purposes only: a California class of
2 persons who were charged on a recurring basis by Rivals.com for auto-renewal subscriptions entered
3 into between March 31, 2013 and the present. Excluded from the class are all persons who are
4 employees, directors, officers and agents of Yahoo or its subsidiaries and affiliated companies, as
5 well as the judges, clerks, and staff members of the United States District Court for the Northern
6 District of California, the Ninth Circuit Court of Appeal, the United States Supreme Court, and their
7 immediate family members.

8 4. The Court conditionally finds, for settlement purposes only and conditioned upon the
9 entry of this Order and the Final Order and Judgment, and the occurrence of the Effective Date, that
10 the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil
11 Procedure have been satisfied in that: (a) the number of Settlement Class Members is so numerous
12 that joinder of all members thereof is impracticable; (b) there are questions of law and fact common
13 to the Settlement Class; (c) the claims of the Plaintiff are typical of the claims of the Settlement Class
14 he seeks to represent for purposes of settlement; (d) the Plaintiff has fairly and adequately represented
15 the interests of the Settlement Class and will continue to do so, and the Plaintiff has retained
16 experienced counsel to represent them; (e) for purposes of settlement, the questions of law and fact
17 common to the Settlement Class Members predominate over any questions affecting any individual
18 Settlement Class Member; and (f) for purposes of settlement, a class action is superior to the other
19 available methods for the fair and efficient adjudication of the controversy. The Court also concludes
20 that, because this Action is being settled rather than litigated, the Court need not consider
21 manageability issues that might be presented by the trial of a statewide class action involving the
22 issues in this case. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). In making these
23 findings, the Court has exercised its discretion in conditionally certifying the Settlement Class on a
24 statewide basis. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998).

25 5. The Court appoints Bob Horn and Joe Kronawitter from the law firm Horn Aylward &
26 Bandy in Kansas City, Missouri, and Darius Ogloza, Micah Nash, and Josephine Lee from the law
27 firm Ogloza Fortney, LLP as counsel for the Class (“Class Counsel”). For purposes of these
28 settlement approval proceedings, the Court finds that Class Counsel are competent and capable of

1 exercising their responsibilities as Class Counsel. The Court designates named Plaintiff Yuan Guo as
2 the representative of the Settlement Class. The Court further appoints JND Legal Administration to
3 serve as the Settlement Administrator.

4 6. The Final Fairness Hearing shall be held before this Court on **November 8, 2018 at**
5 **1:30 p.m.**, to determine whether the Settlement Agreement and Release is fair, reasonable, and
6 adequate and should receive final approval. The Court will rule on Class Counsel's application for an
7 award of attorneys' fees, costs, and expenses (the "Fee Application") at that time. Papers in support
8 of final approval of the Settlement Agreement and Release and the Fee Application shall be filed with
9 the Court according to the schedule set forth in Paragraph 15 below. The Final Fairness Hearing may
10 be postponed, adjourned, or continued by order of the Court without further notice to the Settlement
11 Class. After the Final Fairness Hearing, the Court may enter a Final Order and Judgment in
12 accordance with the Settlement Agreement and Release that will adjudicate the rights of the
13 Settlement Class Members (as defined in the Settlement Agreement and Release) with respect to the
14 claims being settled.

15 7. Pending the Final Fairness Hearing, all proceedings in the Action, other than
16 proceedings necessary to carry out or enforce the terms and conditions of the Settlement Agreement
17 and Release and this Order, are stayed.

18 8. The Court approves, as to form and content, the Long Form Notice and Summary
19 Notice attached as Exhibits "C" and "M," respectively, to Plaintiff's Supplemental Brief regarding
20 preliminary approval filed July 25, 2018.

21 (a) Yahoo shall provide the Settlement Administrator with the following within
22 14 days after this Order: (1) the name, email address, and last address of record for each Rivals.com
23 subscriber with a billing address of record in California; and (2) for each such Rivals.com subscriber,
24 an indication of whether the individual is or was an annual or monthly subscriber.

25 (b) The Settlement Administrator shall email each subscriber with the Summary
26 Notice, within 30 calendar days after receiving the subscriber information, or as soon thereafter as
27 practicable. The date on which the Settlement Administrator emails such notices shall be the Notice
28 Date.

1 (c) The Settlement Administrator shall also cause activation of the settlement
2 website to take place on or about the Notice Date. The Settlement Administrator shall also mail a
3 post card with the Summary Notice for any email notice returned as undeliverable.

4 9. The Court finds that the Long Form Notice and Summary Notice are reasonable, that
5 they constitute due, adequate, and sufficient notice to all persons entitled to receive notice, and that
6 they meet the requirements of due process and Rule 23 of the Federal Rules of Civil Procedure.
7 Specifically, the Court finds that the manner of dissemination of the Long Form Notice and Summary
8 Notice described in Paragraph 8 complies with Rule 23(e) of the Federal Rules of Civil Procedure as
9 it is a reasonable manner of providing notice to those Settlement Class Members who would be
10 bound by the settlement. The Court also finds that the manner of dissemination of the Long Form
11 Notice and Summary Notice described in Paragraph 8 complies with Rule 23(c)(2), as it is also the
12 best practicable notice under the circumstances, provides individual notice to all Settlement Class
13 Members who can be identified through a reasonable effort, and is reasonably calculated, under all
14 the circumstances, to apprise the members of the Settlement Class of the pendency of this Action, the
15 terms of the settlement, and their right to object to the settlement or exclude themselves from the
16 Settlement Class. *See, e.g., Farinella v. PayPal, Inc.*, 611 F. Supp. 2d 250, 256-57 (E.D.N.Y. 2009)
17 (court approved plan disseminating notice by email, internet posting, and publication); *In re Grand*
18 *Theft Auto Video Game Consumer Litig.*, 251 F.R.D. 139, 145 (S.D.N.Y. 2008) (same); *see also Todd*
19 *v. Retail Concepts, Inc.*, No. 07-0788, 2008 WL 3981593, at *2 (M.D. Tenn. Aug. 22, 2008) (court
20 approved plan disseminating notice by email, in-store posting, and website posting).

21 10. Settlement Class Members will have until the dates described in paragraph 15 below,
22 to submit their Claim Forms, which is due, adequate, and sufficient time.

23 11. Each Settlement Class Member who wishes to be excluded from the Settlement Class
24 and follows the procedures set forth in this Paragraph shall be excluded. Putative class members
25 wishing to opt out of the Settlement must send to the Settlement Administrator by fax, U.S. Mail, or
26 email a letter including their name, address, and telephone number and providing a clear statement
27 communicating that they elect to be excluded from the Settlement Class, do not wish to be a
28 Settlement Class Member, and elect to be excluded from any judgment entered pursuant to the

1 Settlement. Any request for exclusion or opt out must be postmarked on or before the opt-out
2 deadline provided in this Order. The date of the postmark on the mailing envelope shall be the
3 exclusive means used to determine whether a request for exclusion has been timely submitted.
4 Members of the Settlement Class who fail to submit a valid and timely request for exclusion on or
5 before the date specified in this Order shall be bound by all terms of this Settlement Agreement and
6 the Final Order and Judgment, regardless of whether they have requested exclusion from the
7 Settlement. All persons or entities who properly elect to opt out of the settlement shall not be
8 Settlement Class Members and shall relinquish their rights to benefits with respect to the Settlement
9 Agreement and Release, should it be approved.

10 12. Any member of the Settlement Class who has not timely submitted a written request
11 for exclusion from the Settlement Class, and thus is a Settlement Class Member, may ask the Court to
12 deny approval by filing an objection. Settlement Class Members cannot ask the Court to order a
13 larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no
14 settlement payments will be sent out and the lawsuit will continue. If Settlement Class Members
15 want that to happen, they must object. Settlement Class Members may object to the proposed
16 settlement in writing. Settlement Class Members may also appear at the Final Approval Hearing,
17 either in person or through their own attorney. If a Settlement Class Member appears through her
18 own attorney, the Settlement Class Member is responsible for paying that attorney. All written
19 objections and supporting papers must (a) clearly identify the case name and number (*Wahl v. Yahoo!*
20 *Inc.*, Case 5:17-cv-02745-BLF), (b) be submitted to the Court either by mailing them to Office of the
21 Clerk of Court, United States District Court for the Northern District of California, 280 South First
22 Street, Room 2112, San Jose, California 95113, or by filing them in person at any location of the
23 United States District Court for the Northern District of California, and (c) be filed or postmarked on
24 or before” a date to be set by the Court. Settlement Class Members who object must set forth their
25 full name, current address, and telephone number. Settlement Class Members must also state in
26 writing all objections and the reasons for each objection, and state whether they intend to appear at
27 the Final Fairness Hearing either with or without separate counsel. Settlement Class Members will
28 not be entitled to be heard at the Final Fairness Hearing unless written notice of the intention to

1 appear at the Final Fairness Hearing and copies of any written objections and/or briefs are filed with
2 the Court on or before a date to be set by the Court. If Settlement Class Members fail to file and
3 serve timely written objections in the manner specified above, Settlement Class Members shall be
4 deemed to have waived all objections and shall be foreclosed from making any objection (whether by
5 appeal or otherwise) to the Settlement.

6 13. Class Counsel shall file their Fee Application at least fourteen days before the deadline
7 for objecting to the settlement.

8 14. Papers in support of final approval of the Settlement Agreement and Release, and in
9 response to objections to the Settlement Agreement and Release or the Fee Application, shall be filed
10 with the Court on or before a date to be set by the Court.

11 15. In summary, the dates of performance are as follows:

12 (a) The Notice Date shall occur within forty-five (45) days after the entry of this
13 Order, or as soon thereafter as practicable;

14 (b) The Bar Date shall be sixty (60) calendar days after the Notice Date. All
15 Claim Forms or requests for exclusion must be postmarked on or before the Bar Date. The Bar Date
16 may be extended by written agreement of the parties through Class Counsel and Defense Counsel
17 without further approval of the Court or notice to the Settlement Class, provided that the settlement
18 website administered by the Settlement Administrator shall be promptly updated to reflect any
19 extension of the Bar Date. The Long Form Notice shall include information concerning the Bar Date
20 and shall also advise members of the Settlement Class that the Bar Date may be extended and that, if
21 the Bar Date is extended, such information shall be provided on the settlement website.

22 (c) Class Counsel shall file their Fee Application at least fourteen days before the
23 deadline for objecting to the settlement;

24 (d) All objections to the Settlement Agreement And Release and written notices of
25 the objecting class member's intention to appear at the Final Fairness Hearing shall be filed on or
26 before thirty (30) days after the Notice Date;

27 (e) Papers in support of final approval of the Settlement Agreement And Release,
28 and in response to objections to the Settlement Agreement And Release or the Fee Application, shall

1 be filed with the Court on or before seven (7) days prior to the Final Fairness Hearing; and

2 (f) The Final Fairness Hearing shall be held on **November 8, 2018, at 1:30 p.m.**

3 16. These dates of performance may be extended by order of the Court, for good cause
4 shown, without further notice to the Settlement Class. Settlement Class Members may check the
5 settlement website at www.renewalsettlement.com regularly for updates and further details regarding
6 extensions of these dates of performance. Settlement Class Members may also access the Court
7 docket in this case through the Court's Public Access to Court Electronic Records (PACER) system
8 at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United
9 States District Court for the Northern District of California, 280 South First Street, Room 2112, San
10 Jose, California 95113, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court
11 holidays.

12 17. Notwithstanding any other provision of the Settlement Agreement, if more than 480
13 members of the Settlement Class opt out of the Settlement, Yahoo, in its sole discretion, may rescind
14 and revoke the entire Settlement and this Settlement Agreement, thereby rendering the Settlement
15 null and void in its entirety, by sending written notice that Yahoo revokes the settlement pursuant to
16 the Settlement Agreement and Release to Class Counsel within 10 court days following the date the
17 Settlement Administrator informs Yahoo of the number of Settlement Class Members who have
18 requested to opt out of the Settlement pursuant to the provisions set forth in the Settlement
19 Agreement and Release.

20 18. In the event the Settlement Agreement and Release is not approved by the Court, or
21 for any reason the parties fail to obtain a Final Order and Judgment as contemplated in the Settlement
22 Agreement and Release, or the Settlement Agreement and Release is terminated pursuant to its terms
23 for any reason or the Effective Date does not occur for any reason, then the following shall apply:

24 (a) All orders and findings entered in connection with the Settlement Agreement
25 and Release shall become null and void and have no force and effect whatsoever, shall not be used or
26 referred to for any purposes whatsoever, and shall not be admissible or discoverable in this or any
27 other proceeding;

28 (b) The conditional certification of the Settlement Class pursuant to this Order

1 shall be vacated automatically, and the Actions shall proceed as though the Settlement Class had
2 never been certified pursuant to this Settlement Agreement and Release and such findings had never
3 been made;

4 (c) Nothing contained in this Order is, or may be construed as, a presumption,
5 concession or admission by or against Yahoo, or any Released Party (as that term is defined in the
6 Settlement Agreement And Release) of any default, liability or wrongdoing as to any facts or claims
7 alleged or asserted in the Action, or in any actions or proceedings, whether civil, criminal or
8 administrative;

9 (d) Nothing in this Order or pertaining to the Settlement Agreement and Release,
10 including any of the documents or statements generated or received pursuant to the claims
11 administration process, shall be used as evidence in any further proceeding in this case; and


12 (e) All of the Court's prior Orders having nothing whatsoever to do with the
13 certification of the Settlement Class shall, subject to this Order, remain in force and effect.

14 19. Pending final determination of whether the proposed settlement should be approved,
15 no Settlement Class Member directly, derivatively, in a representative capacity, or in any other
16 capacity, shall commence or continue any action against any of the Released Parties in any court or
17 tribunal asserting any of the Released Claims (as that term is defined in the Settlement Agreement
18 And Release).

19 20. JND Legal Administration is hereby appointed as Settlement Administrator for this
20 settlement and shall perform all of the duties of the Settlement Administrator set forth in the
21 Settlement Agreement and Release.

22 21. Class Counsel and Defense Counsel are hereby authorized to use all reasonable
23 procedures in connection with approval and administration of the settlement that are not materially
24 inconsistent with this Order or the Settlement Agreement and Release, including making, without
25 further approval of the Court, minor changes to the form or content of the Long Form Notice,
26 Summary Notice, and other exhibits that they jointly agree are reasonable or necessary.

1 IT IS SO ORDERED, this 27th day of July, 2018

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3 Hon. Beth Labson Freeman
4 United States District Court Judge

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