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11 Attorneys for Plaintiff
12 YUAN GUO, on behalf of himself and all others similarly situated

13
14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE DIVISION

17 ANDREW WAHL,
18 Plaintiff,
19 v.
20 YAHOO! INC., a Delaware corporation dba
RIVAL.COM; and DOES 1 through 10,
21 inclusive,
22 Defendants.

CASE NO. 5:17-cv-02745-BLF
**PLAINTIFF'S UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF
SETTLEMENT AGREEMENT**
ASSIGNED FOR ALL PURPOSES TO:
HON. BETH LABSON FREEMAN
Action Filed: Mar. 31, 2017
Action Removed: May 12, 2017
Trial Date: None Set

I. INTRODUCTION

Through this Unopposed Motion for Preliminary Approval of Settlement Agreement, Plaintiff, Yuan Guo (“Plaintiff”), respectfully asks the Court to:

- Certify a Settlement Class for settlement purposes only;
- Appoint Plaintiff as Class Representative and his counsel as Class Counsel;
- Approve the form and manner of notice to the Settlement Class;
- Approve the proposed Settlement Administrator, JND Legal Administration;
- Preliminarily approve the Settlement Agreement; and
- Set a hearing for the Court to consider the fairness of the settlement and whether to provide Final Approval to the Settlement Agreement.

II. LEGAL STANDARD

Pursuant to Fed. R. Civ. P. 23(e), class actions “may be settled, voluntarily dismissed, or compromised only with the court’s approval.” As a matter of “express public policy,” federal courts favor and encourage settlements, particularly in class actions, where the costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *See Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) (noting the “strong judicial policy that favors settlements, particularly where complex class action litigation is concerned”). *The Manual for Complex Litigation (Fourth)* §21.63 (2004) describes a three-step procedure for approval of class action settlements: (i) preliminary approval of the proposed settlement; (ii) dissemination of the notice of the settlement to class members; and (iii) a formal fairness and final settlement approval hearing. Plaintiff requests that the Court take the first step in the settlement approval process by granting preliminary approval of the Settlement Agreement and the form and manner of notice to the Settlement Class, provisionally certifying the Settlement Class, appointing Plaintiff as Class Representative and his counsel as Class Counsel, approving the proposed Settlement Administrator, JND Legal Administration, and setting a fairness hearing..

1 **III. THE SETTLEMENT CLASS**

2 Plaintiff respectfully requests that the Court provisionally certify the following Settlement
3 Class for settlement purposes only, and appoint Plaintiff as Class Representative and his counsel as
4 Class Counsel:

5 All customers in California who were charged on a recurring basis by Rivals.com
6 for auto-renewal subscriptions entered into between March 31, 2013 and the
7 present.

8 Provisional certification under Rule 23(a) and (b)(3) will permit the parties to provide notice
9 of the Settlement to the Settlement Class, which will inform them of the Settlement’s terms, their
10 right to be heard on its fairness, their right to opt out, an estimate of each Class Member’s Award,
11 and the date, time and place of the Final Approval Hearing. If the Court does not approve the
12 Settlement, Defendant has reserved its right to later challenge class certification.

13 **IV. THE SETTLEMENT AGREEMENT**

14 Plaintiff and Defendant, Yahoo! Inc. (d/b/a Rivals.com),¹ have entered into a Settlement
15 Agreement, attached hereto as Exhibit 1.² The Settlement Agreement provides, among other things,
16 the following relief to the Settlement Class:

17 1. Compensatory Relief: Settlement Class Members will be entitled to receive either a
18 credit towards a Rivals.com subscription or a cash payment. Settlement Class Members who
19 purchased an annual subscription will be entitled to receive either 5 months of credit or, at their
20

21 _____
22 ¹ It is Plaintiff’s understanding that: on or about June 13, 2017, Yahoo! Inc. transferred to Yahoo
23 Holdings, Inc. all liabilities relevant to the class action lawsuit filed by Andrew Wahl; Yahoo
24 Holdings, Inc., a Delaware corporation with an office located at 701 First Avenue, Sunnyvale,
25 California, 94089, is a wholly owned subsidiary of Verizon Communications Inc.; Yahoo! Inc. no
26 longer owns any interest in the past, present, or future liabilities relevant to this action; Effective
27 January 1, 2018, Yahoo Holdings, Inc. changed its name to Oath Holdings Inc. For purposes of
28 this Settlement Agreement and the releases given thereunder, 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.

² The parties have agreed to the form of Exhibit 1 and are gathering signatures. A fully-executed
Settlement Agreement will be filed with the Court prior to any final approval hearing.

(Cont’d on next page)

1 election, \$20 in cash. Settlement Class Members who purchased a monthly subscription will be
2 entitled to receive either 3 months of credit or, at their election, \$10 cash.³

3 2. Practice Changes: Within 90 days of the Effective Date of the Settlement Agreement,
4 Yahoo will modify the subscription page for Rivals.com to present its automatic renewal terms in a
5 clear and conspicuous manner for California customers before a subscription agreement is fulfilled
6 and in visual proximity to the request to consent to the subscription offer.

7 3. Charitable Contribution for Unclaimed Payments: To the extent any Settlement Class
8 Members who elect to receive cash in lieu of credits have not cashed their payments within 90 days
9 of mailing, those payments will be cancelled and the outstanding amount will be provided to a
10 mutually agreed upon charitable organization.

11 4. Attorneys' Fee and Expense Award and Class Representative Award: Class Counsel
12 may ask the Court to award attorneys' fees, costs, and expenses up to a maximum total of \$300,000
13 without any opposition from Yahoo, and Class Counsel and Plaintiff may ask the Court for the
14 payment of a class incentive stipend from Yahoo to Plaintiff in the amount of \$5,000 without any
15 opposition from Yahoo.
16
17

18 **V. PROPOSED NOTICE**

19 To protect their rights, the Court must provide class members with the best notice practicable
20 regarding the proposed settlement. Fed. R. Civ. P. 23(c)(2). The best practicable notice is that which
21 is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of
22 the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover*
23 *Bank & Trust Co.*, 339 U.S. 306, 314 (1950).
24

25
26
27 ³ Settlement Class Members are entitled to only one form of relief, based on either an annual
28 subscription or a monthly subscription. If a Settlement Class Member had both an annual
subscription and a monthly subscription during the relevant time period, he or she will receive
either a credit towards a Rivals.com subscription or cash as an annual subscriber only.

1 Yahoo will provide the Settlement Administrator with: (1) the name, email address, and last
2 address of record for each Rivals.com subscriber with a billing address of record in California; and
3 (2) for each such Rivals.com subscriber, an indication of whether the individual is or was an annual
4 or monthly subscriber. The Settlement Administrator will email each subscriber with the Summary
5 Notice (attached to the Settlement Agreement as Exhibit E), within 30 calendar days after receiving
6 the subscriber information, or as soon thereafter as practicable. The Settlement Administrator will
7 also a mail a post card with the Summary Notice for any email notice returned as undeliverable. The
8 Settlement Administrator shall also cause activation of the settlement website to take place on or
9 about the Notice Date, and such website shall contain the Long Form Notice (attached to the
10 Settlement Agreement as Exhibit D) and other settlement documents and pleadings.

11 **VI. THE PROPOSED SETTLEMENT IS FAIR AND THE NOTICE PLAN IS THE BEST**
12 **PRACTICABLE UNDER THE CIRCUMSTANCES**

13 Andrew Wahl, a resident of Missouri, filed the original complaint in this action on March 31,
14 2017 in Santa Clara Superior Court, bringing a cause of action under California's Unfair Competition
15 Law ("UCL") based on the alleged violations of California's Automatic Renewal Law (Cal. Bus. &
16 Prof. Code §§ 17600-17606) and a California statute regarding liquidated damages provisions (Cal
17 Civ. Code § 1671). Mr. Wahl alleged that he purchased one-year premium subscription to
18 Rivals.com for \$99.95 in February 2015 and agreed to the Rivals.com Additional Terms of Service
19 (the "Terms"), which provide that the subscription would auto-renew on its anniversary date. Mr.
20 Wahl's subscription auto-renewed in February 2016 and again in February 2017, according to the
21 Terms. Two weeks later, Mr. Wahl attempted to cancel his subscription and obtain a refund but
22 abandoned his attempt to do so after realizing that the Terms provided that the subscription was non-
23 refundable.

24 Yahoo removed the case to the Northern District of California and moved to dismiss on the
25 grounds, *inter alia*, that: (1) Mr. Wahl lacked standing to sue under the UCL and Auto Renewal Law
26 because the Auto Renewal Law protects only California consumers (while he is Missouri resident)
27 and, separately, he failed to show a sufficient nexus between California and the alleged wrongful
28 conduct; (2) Mr. Wahl failed to allege an injury-in-fact because he received the subscription he

1 signed up for, was aware it auto-renewed, and never cancelled his subscription; (3) Mr. Wahl failed
 2 to show reliance or causation because he was not harmed by any conduct by Yahoo and expressly
 3 agreed to purchase an auto-renewable subscription; and (4) there was no liquidated damages
 4 provision in the Terms (*i.e.*, an additional fee paid after and in response to a breach of contract)—the
 5 subscription was merely non-refundable.

6 Yahoo's motion to dismiss was granted in full on September 15, 2017. The parties have since
 7 agreed to extend deadlines in the case to allow for identification of a California plaintiff—Mr. Guo—
 8 and pursue a settlement. While Plaintiff is confident in the strength of his case, he is aware of the
 9 significant defenses available to Yahoo with respect to class certification, the underlying merits of his
 10 claims, and the inherent risks and delays of litigation.

11 The Settlement Agreement reached between the parties is fair on its face and allows Settlement
 12 Class Members to receive credit towards a Rivals.com subscription without the need to submit a claim
 13 form, or to elect to receive a cash payment. Further, the risks of non-recovery for the Settlement Class
 14 were real, including the risks that the Court could deny class certification or that Plaintiff would not
 15 prevail on a second motion to dismiss, at summary judgment, or at trial. The putative plaintiff class
 16 also ran the risk that, even if successful after trial, recovery might result in a lesser form of relief than
 17 provided by the injunctive and monetary features of the proposed settlement. Considering the risks
 18 attendant to continuing this litigation, Plaintiff believes the compensation agreed upon is fair and
 19 reasonable. In addition, Plaintiff submits that the proposed notice plan outlined in the Settlement
 20 Agreement is the best notice practicable under the circumstances of this case, and will be highly
 21 effective.

22 VII. CONCLUSION

23 For the foregoing reasons, Plaintiff respectfully requests that the Court grant its Unopposed
 24 Motion for Preliminary Approval of the Settlement Agreement.

25 Dated: May 17, 2018

OGLOZA FORTNEY LLP

27 By: /s/ Darius Ogloza

DARIUS OGLOZA

Attorneys for Plaintiff Yuan Guo

CERTIFICATE OF SERVICE

I hereby certify that on May 17, 2017 a copy of the foregoing **PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT** was filed electronically and served by mail on anyone listed on the Court's docket as unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's EM/ECF System.

/s/ Joseph A. Kronawitter

Joseph A. Kronawitter