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11 *Attorneys for Plaintiff Ronald Schwartz*

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

15 RONALD SCHWARTZ, Individually and on)
Behalf of All Others Similarly Situated,)
16)
Plaintiff,)
17)
vs.)
18)
YAHOO! INC.,)
19)
Defendant.)

Case No.
CLASS ACTION
COMPLAINT FOR GROSS NEGLIGENCE,
BAILMENT AND DECLARATORY
RELIEF
DEMAND FOR JURY TRIAL

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1 Plaintiff Ronald Schwartz (“Plaintiff”), individually and on behalf of all others similarly
2 situated, by his undersigned attorneys, brings this class action complaint against defendant Yahoo!
3 Inc. (“Yahoo,” the “Company,” or “Defendant”) based on personal knowledge as to himself and
4 upon information and belief as to all other matters based on the investigation of counsel.

5 **NATURE OF THE ACTION**

6 1. Defendant Yahoo is a leading Internet company that provides Internet-based services
7 to hundreds of millions of users on a regular and consistent basis. As part of its business, Yahoo
8 collects and stores large volumes of sensitive personal information about its users, including the
9 users’ names, email addresses, telephone numbers, birth dates, passwords, and security questions
10 linked to a users’ account. Yahoo requires all of this information in order to create an account.

11 2. Despite the fact that it requires, collects and stores sensitive personal information for
12 hundreds of millions of users, the Company has failed to adequately protect its users or itself from
13 data breaches. Indeed, Yahoo’s security systems have been breached in the past, and the Company
14 has demonstrated that it cannot adequately secure the personal information of its users.

15 3. Despite Yahoo’s promises to “take[] your privacy seriously,” to “limit access to
16 personal information about you to employees who we believe reasonably need to come into contact
17 with that information to provide products or services to you or in order to do their jobs,” and to
18 “have physical, electronic, and procedural safeguards that comply with federal regulations to protect
19 personal information about you,” Yahoo failed to live up to those promises when it failed to
20 adequately protect its users’ personal information.

21 4. Specifically, on September 22, 2016, Yahoo issued a press release in which it
22 announced that a “recent investigation” confirmed that sensitive personal account information
23 associated with at least *500 million user accounts* “was stolen from the company’s network in late
24 2014 by what it believes is a state-sponsored actor.” The stolen information included users’ names,
25 email addresses, telephone numbers, dates of birth, hashed passwords and, in some cases, encrypted
26 or unencrypted security questions and answers. Reports indicate that *this data breach was the*
27 *largest from a single site in history.*

1 5. As a result of Defendants’ failure to establish and implement basic data security
2 protocols, contrary to Yahoo’s guarantees, its users’ personal information is now in the hands of
3 criminals and/or enemies of the United States, subjecting Plaintiff and the Class (as defined below)
4 to the serious risk of identity theft in a wide variety of forms.

5 6. Worse yet, despite the fact that the attack took place in late 2014, Yahoo was so
6 grossly negligent in securing its users’ personal information that it says that it did not even discover
7 the incident until the summer of 2016. In other words, Defendant’s misconduct was so bad that it
8 evidently allowed unauthorized and malicious access to Plaintiff’s and the Class’s personal
9 information on Defendant’s computer systems to continue unimpeded for *nearly two years*.

10 7. Circumstantial evidence suggests that certain Yahoo insiders *did* know of the breach
11 long before it was disclosed, but hid it from the public until after a \$4.8 billion sale of the Company
12 to Verizon was announced in July 2016. Verizon has stated that it did not learn of the breach until
13 September 20, 2016, and commentators have noted that “Verizon might want to lower the price it is
14 paying because it wasn’t notified of the hack sooner and doesn’t yet know the full liability Yahoo
15 and Verizon would face from victims of the hack.”

16 8. Plaintiff and Class members must now take matters into their own hands to protect
17 themselves from fraud. Indeed, although the Company has stated that the “ongoing investigation”
18 suggests that the stolen information did not include payment card data or bank account information,¹
19 Yahoo has nevertheless encouraged its users to consider placing a “security freeze” (also known as a
20 “credit freeze”) on their credit file. A security freeze is designed to prevent potential creditors from
21 accessing an individual’s credit file at the consumer reporting agencies without the individual’s
22 consent, and, according to Yahoo’s notice to its users, costs roughly between \$5 and \$20 per freeze.
23 Yahoo has offered no financial assistance to its users.

24 9. Plaintiff brings this class action lawsuit against Yahoo for failing to adequately
25 safeguard his and others’ personal information. Plaintiff seeks judgment requiring Yahoo to remedy
26 the harm caused by its misconduct, which includes compensating Plaintiff and Class members for

27 _____
28 ¹ Plaintiff does not state this as a definitive fact.

1 resulting account fraud and for all reasonably necessary measures Plaintiff and Class members have
2 had to take in order to identify and safeguard the accounts put at risk by Yahoo's grossly negligent
3 security. Plaintiff further seeks a declaratory judgment declaring unenforceable the limitation of
4 liability clause in Yahoo's Terms of Service.

5 **INTRADISTRICT ASSIGNMENT**

6 10. A substantial part of the events or conduct that give rise to the claims in this action
7 occurred in the county of Santa Clara, and as such this action is properly assigned to the San Jose
8 Division of this Court.

9 **PARTIES**

10 11. Plaintiff Ronald Schwartz is a natural person and a resident and citizen of New York.
11 Mr. Schwartz is one of the approximately 500 million Yahoo users whose personal information was
12 stolen because Yahoo did not take reasonable steps to secure such information.

13 12. Defendant Yahoo is a Delaware corporation headquartered at 701 First Avenue,
14 Sunnyvale, California 94089. Yahoo does business throughout the State of California and the United
15 States. Yahoo maintains a substantial portion of its computer systems in California.

16 **JURISDICTION AND VENUE**

17 13. Jurisdiction is proper in this Court pursuant to the Class Action Fairness Act, 28
18 U.S.C. §1332(d) ("CAFA"), because (i) the proposed Class consists of well over 100 members; (ii)
19 the parties are minimally diverse, as members of the proposed Class are citizens of a state different
20 from Defendant's home state; and (iii) the aggregate amount in controversy exceeds \$5,000,000,
21 exclusive of interests and costs.

22 14. This Court has personal jurisdiction over Plaintiff because Plaintiff submits to the
23 Court's jurisdiction. This Court has personal jurisdiction over Yahoo because it maintains its
24 principal headquarters in California, regularly conducts business in California, and has sufficient
25 minimum contacts in California. In addition, Plaintiff's claims arise out of Defendant's conducting
26 and transacting business in California, and many of the actions giving rise to the Complaint took
27 place in this District.

1 15. Venue is proper in this District pursuant to 28 U.S.C. §1391 because Yahoo is a
2 resident of this District and is subject to this Court’s personal jurisdiction. Yahoo is registered to
3 conduct business throughout California, regularly conducts business in this District, and maintains
4 an office in this District. In addition, the causes of action arose, in substantial part, in this District.

5 **FACTUAL ALLEGATIONS**

6 **Company Background**

7 16. Yahoo is a Delaware corporation that operates a host of Internet websites and
8 services, including web portal, search engine and e-mail service, among others.

9 17. Yahoo’s security systems have been breached before. In July 2012, a group of
10 hackers based in Eastern Europe breached Yahoo’s security measures and extracted e-mail addresses
11 and passwords that were stored unencrypted within a Yahoo database. The hackers then posted these
12 login credentials online, in an effort to expose Yahoo’s lax security measures.

13 18. Yahoo guarantees its users that it will take certain specific steps to protect the
14 personal, private information Yahoo requires an individual provide the Company in order to create
15 an account. Specifically, Yahoo promises on its website and in its Privacy Policy:

- 16 • to “take[] your privacy seriously;”
17 • to “limit access to personal information about you to employees who we believe
18 reasonably need to come into contact with that information to provide products or
19 services to you or in order to do their jobs;” and
20 • to “have physical, electronic, and procedural safeguards that comply with federal
regulations to protect personal information about you.”

21 **The Security Breach**

22 19. According to Yahoo, it first learned of a potentially massive data breach at some point
23 during the summer of 2016, when hackers posted to underground online forums certain data that
24 they claimed was obtained from Yahoo. It was not clear whether the data came from Yahoo itself (as
25 opposed to a third-party service), and so Yahoo launched an investigation, but was unable to confirm
26 whether the stolen data had originated from a breach at Yahoo.

27 20. Although the Company says that it did not find evidence that the stolen data came
28 from its own systems, it did find evidence of a far more serious breach: according to Yahoo, in 2014,

1 a state-sponsored actor stole account information associated with approximately 500 million Yahoo
2 users.

3 21. On September 22, 2016, Yahoo issued a press release announcing that its internal
4 investigation had confirmed that account information associated with *at least 500 million user*
5 *accounts* had been stolen. The press release stated, in part, as follows:

6 A recent investigation by Yahoo! Inc. (NASDAQ:YHOO) has confirmed that a copy
7 of certain user account information was stolen from the company's network in late
8 2014 by what it believes is a state-sponsored actor. The account information may
9 have included names, email addresses, telephone numbers, dates of birth, hashed
10 passwords (the vast majority with bcrypt) and, in some cases, encrypted or
11 unencrypted security questions and answers. The ongoing investigation suggests that
12 stolen information did not include unprotected passwords, payment card data, or
bank account information; payment card data and bank account information are not
stored in the system that the investigation has found to be affected. Based on the
ongoing investigation, Yahoo believes that information associated with at least 500
million user accounts was stolen and the investigation has found no evidence that the
state-sponsored actor is currently in Yahoo's network. Yahoo is working closely with
law enforcement on this matter.

13 Yahoo is notifying potentially affected users and has taken steps to secure
14 their accounts. These steps include invalidating unencrypted security questions and
15 answers so that they cannot be used to access an account and asking potentially
affected users to change their passwords. Yahoo is also recommending that users
who haven't changed their passwords since 2014 do so.

16 Yahoo encourages users to review their online accounts for suspicious
17 activity and to change their password and security questions and answers for any
18 other accounts on which they use the same or similar information used for their
19 Yahoo account. The company further recommends that users avoid clicking on links
20 or downloading attachments from suspicious emails and that they be cautious of
unsolicited communications that ask for personal information. Additionally, Yahoo
asks users to consider using Yahoo Account Key, a simple authentication tool that
eliminates the need to use a password altogether.

21 Online intrusions and thefts by state-sponsored actors have become
22 increasingly common across the technology industry. Yahoo and other companies
23 have launched programs to detect and notify users when a company strongly suspects
that a state-sponsored actor has targeted an account. Since the inception of Yahoo's
program in December 2015, independent of the recent investigation, approximately
10,000 users have received such a notice.

24 22. Numerous articles discussing the data breach immediately followed. Indeed, *The*
25 *New York Times* published an article that same day, titled "Yahoo Says Hackers Stole Data on 500
26 Million Users in 2014," which quoted security experts who explained that the Yahoo data breach
27 could have major consequences:
28

1 “The stolen Yahoo data is critical because it not only leads to a single system
2 but to users’ connections to their banks, social media profiles, other financial services
3 and users’ friends and family,” said Alex Holden, the founder of Hold Security,
4 which has been tracking the flow of stolen Yahoo credentials on the underground
5 web. “This is one of the biggest breaches of people’s privacy and very far-
6 reaching.”²

7 23. Other reports indicate that this was the largest data breach from a single site in
8 history.

9 24. The consequences of the Yahoo data breach will be significant, and the breach
10 demonstrates that the Company has, by acting with reckless disregard for the security of its users’
11 personal information that it promised to protect, utterly failed to implement reasonable security
12 measures to protect its users’ sensitive personal information, despite the Company being the target of
13 data breaches in the past. As a result of Defendant’s reckless conduct and failure to establish and
14 implement basic data security protocols, despite its knowledge and the warnings of prior data
15 breaches, its users’ personal information is now in the hands of criminals, subjecting Plaintiff and the
16 Class to the serious risk of identity theft in a wide variety of forms.

17 25. What is worse, despite the fact that the attack took place in late 2014, Yahoo was so
18 reckless in securing its users’ personal information that it says that it did not even discover the
19 incident until the summer of 2016 – *nearly two years after the attack*. This is an unusually long
20 time to identify a hacking incident. Indeed, according to the Ponemon Institute, which tracks data
21 breaches, the average time it takes organizations to identify a data breach is 191 days, and the
22 average time to contain a breach is 58 days after discovery.³

23 **Yahoo’s Recommended Security Steps**

24 26. In Yahoo’s September 22, 2016 press release announcing the attack, the Company
25 provided a link to a Yahoo Account Security Notice.

26 27. Also available after following the link provided in the press release was a page
27 detailing Account Security Issues Frequently Asked Questions (“FAQs”). The FAQs provided

28 ² Nicole Perlroth, *Yahoo Says Hackers Stole Data on 500 Million Users in 2014*, N.Y. Times (Sept. 22, 2016).

³ *Id.*

1 additional background on the data breach and offered suggestions on how Yahoo users could secure
2 their account.

3 28. One recommendation was that users place a “security freeze” (also known as a “credit
4 freeze”) on their credit files. A security freeze is designed to prevent potential creditors from
5 accessing an individual’s credit file at the consumer reporting agencies without the individual’s
6 consent, and costs roughly between \$5 and \$20 per freeze. The Company provided instructions on
7 how to implement a security freeze and provided additional details on what the security-freeze
8 process entails, but offered no financial assistance.

9 29. Plaintiff has placed a security freeze on his credit file. Plaintiff, and other Class
10 members who do the same, should be compensated by Yahoo for the cost of the security freeze in
11 light of Yahoo’s failure to adequately secure its users’ personal information.

12 **PLAINTIFF’S EXPERIENCE**

13 30. Plaintiff has been a Yahoo user continually since approximately 2008 and has been
14 damaged as a result of the data breach that Yahoo announced on September 22, 2016.

15 31. Concerned about the theft of his personal information, Plaintiff has placed a security
16 freeze on his credit file, as recommended by Yahoo.

17 **CLASS ACTION ALLEGATIONS**

18 32. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure 23 (“Rule 23”)
19 on behalf of himself and a class of other similarly situated individuals (the “Class”), as defined
20 specifically below:

21 **All persons within the United States whose personal information was accessed**
22 **following the data breach that Yahoo announced in a press release on**
23 **September 22, 2016.**

24 33. Excluded from the Class is Defendant; any person who is an officer, director, partner
25 or controlling person of Defendant, including any of its subsidiaries or affiliates; any entity in which
26 Defendant has a controlling interest; and the legal representatives, heirs, successors and assigns of
27 any such excluded person or entity.

28 34. Plaintiff satisfies the numerosity, commonality, typicality, and adequacy prerequisites
for suing as a representative party pursuant to Rule 23.

1 35. **Numerosity.** Yahoo has stated publicly that approximately 500 million of its users
2 were affected by this data breach, and according to public records there were more than 80 million
3 Yahoo users in the United States alone during 2014 when the breach occurred. Joinder is therefore
4 impracticable and the numerosity requirement of Rule 23 is easily satisfied here.

5 36. **Commonality.** Plaintiff's and Class members' claims raise predominately common
6 factual and legal questions that can be answered for all Class members through a single class-wide
7 proceeding. For example, to resolve any Class member's claims, it will be necessary to answer the
8 following questions, and the answer to each of these questions will necessarily be the same for each
9 Class member.

10 (a) whether Defendant owed a duty of care to Plaintiff and the Class with respect
11 to the security of their personal information;

12 (b) whether Defendant acted with reckless disregard for the safety and security of
13 the personal information it promised to protect by failing to establish appropriate administrative,
14 technical, and physical safeguards to ensure the security and confidentiality of records and to protect
15 against known and anticipated threats or hazards to the security and integrity of these records;

16 (c) whether the Defendant's conduct was reckless or intentional;

17 (d) whether Defendant acted appropriately in securing Plaintiff and Class
18 members' personal information; and

19 (e) whether Plaintiff and Class members are entitled to damages, declaratory
20 and/or injunctive relief.

21 37. **Typicality.** Plaintiff's claims are typical of the claims of the members of the Class.
22 Among other things, Plaintiff and Class members provided personal information that was stored on
23 Defendant's systems because they are users of Yahoo's services. In addition, Plaintiff's claims are
24 typical of Class members' claims as each arises from the same data breach and the same alleged
25 reckless conduct on the part of Yahoo in handling the Class members' personal information.

26 38. **Adequacy.** Plaintiff will adequately represent the proposed Class members. He has
27 retained counsel competent and experienced in class action and privacy litigation and intends to
28

1 pursue this action vigorously. Plaintiff has no interests contrary to or in conflict with the interests of
2 Class members.

3 39. In addition to satisfying the prerequisites of Rule 23(a), Plaintiff satisfies the
4 requirements for maintaining a class action under Rule 23(b)(3). Common questions of law and fact
5 predominate over any questions affecting only individual members and a class action is superior to
6 individual litigation. Plaintiff knows of no difficulty to be encountered in the management of this
7 action that would preclude its maintenance as a class action.

8 **COUNT I**

9 **Gross Negligence**

10 40. Plaintiff incorporates the above allegations by reference.

11 41. By maintaining their personal information in a database that was accessible through
12 the Internet, Yahoo owed Plaintiff and Class members a duty of care to employ reasonable Internet
13 security measures to protect this information.

14 42. Defendant, with reckless disregard for the safety and security of users' personal
15 information it was entrusted with, breached the duty of care owed to Plaintiff and the Class by
16 failing to implement reasonable security measures to protect its users' sensitive personal
17 information. In failing to employ these basic and well-known Internet security measures, Yahoo
18 departed from the reasonable standard of care and violated its duty to protect Plaintiff's and Class
19 members' personal information. Defendant further breached its duty of care by allowing the breach
20 to continue undetected and unimpeded for nearly two years after the hackers first gained access to
21 Defendant's systems.

22 43. The unauthorized access to Plaintiff's and Class members' personal information was
23 reasonably foreseeable to Yahoo, particularly considering that the method of access is widely known
24 in the computer and data security industry, and that it has long been standard practice in the Internet
25 technology sector to encrypt personal information, including critical login credentials.

26 44. Neither Plaintiff nor other Class members contributed to the security breach or
27 Yahoo's employment of insufficient security measures to safeguard personal information.

1 53. Yahoo further breached its duty to safeguard Plaintiff's and Class members' personal
2 information by failing to timely and accurately notify them that their information had been
3 compromised as a result of the Yahoo data breach.

4 54. As a direct and proximate result of Yahoo's breach of its duty, Plaintiff and Class
5 members suffered consequential damages that were reasonably foreseeable to Yahoo, including but
6 not limited to the damages set forth herein.

7 55. As a direct and proximate result of Yahoo's breach of its duty, the personal
8 information of Plaintiff and Class members entrusted to Yahoo during the bailment (or deposit) was
9 damaged and its value diminished.

10 **COUNT III**

11 **Declaratory Relief**

12 56. Plaintiff incorporates the above allegations by reference.

13 57. There is an active case and controversy among Plaintiff on the one hand, and Yahoo
14 on the other.

15 58. Pursuant to 28 U.S.C. §2201, Plaintiff seeks a declaration as to the following:

16 (a) That, to the extent Plaintiff's claims herein are covered by Yahoo's Terms of
17 Service, Section 20 of Yahoo's Terms of Service, purporting to limit Yahoo's liability for, *inter alia*,
18 "unauthorized access to . . . your data," is unenforceable because it is against public policy and both
19 procedurally and substantive unconscionable; and

20 (b) That, to the extent Plaintiff's claims herein are covered by Yahoo's Terms of
21 Service, Section 20 of Yahoo's Terms of Service is unenforceable because and violates Cal. Civ.
22 Code §1668 and/or Cal. Commercial Code §2719.

23 59. Plaintiff is in doubt as to whether Yahoo's Terms of Service apply to his claims and
24 whether, if so, the limitation of liability clause therein is lawful and enforceable under California
25 law.

26 60. There is a bona fide dispute between the parties hereto, and Plaintiff has and does
27 raise justiciable issues as to the existence or non-existence of his rights, powers, obligations, and
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1 legal relations with Yahoo by virtue of the Terms of Service, this complaint, and the applicable
2 statutes and rules of this state.

3 61. Plaintiff is in doubt as to his rights, powers, obligations, and legal relations and there
4 is an actual and present need for a declaratory judgment as to the issues set forth herein.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff Ronald Schwartz, on behalf of himself and the Class, respectfully
7 requests that this Court enter an Order:

8 A. Certifying this case as a class action on behalf of the Class defined above, appointing
9 Plaintiff as representative of the Class, and appointing his counsel as Class Counsel;

10 B. Awarding damages to Plaintiff and Class members in an amount to be determined at
11 trial;

12 C. Awarding injunctive and other equitable relief as is necessary to protect the interests
13 of the Class;

14 D. Declaring unenforceable Section 20 of Yahoo's Terms of Service;

15 E. Awarding Plaintiff and the Class their reasonable litigation expenses and attorneys'
16 fees;

17 F. Awarding Plaintiff and the Class pre- and post-judgment interest, to the extent
18 allowable; and

19 G. Awarding such other and further relief as equity and justice may require.

20 **JURY TRIAL**

21 Plaintiff demands a trial by jury for all issues so triable.

22 DATED: September 23, 2016

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25 *s/ Shawn A. Williams*
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