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13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA

15 REBECCA ABRAMS, Individually and on
 16 Behalf of Those Similarly Situated,

17 Plaintiff,

18 vs.

19 YAHOO! INC., a California Corporation,

20 Defendant.

Case No.

CLASS ACTION

**CLASS ACTION COMPLAINT FOR
 STATUTORY DAMAGES AND
 INJUNCTIVE RELIEF FOR
 VIOLATION OF CALIFORNIA'S
 INVASION OF PRIVACY ACT**

JURY TRIAL DEMANDED

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1 Plaintiff Rebecca Abrams (“Plaintiff”), individually and on behalf of the Class described below,
2 brings this action for injunctive relief and statutory damages against Defendant Yahoo Inc., (“Yahoo”)
3 and allege as follows:

4 **I. INTRODUCTION**

5 1. This is a class action seeking injunctive relief and statutory damages against Yahoo for
6 its unlawful interception of the contents of communications sent and/or received by U.S.-domiciled
7 non-users of Yahoo’s email service (“Yahoo Mail”) to and/or from users of the service from June 1,
8 2013 to the present in violation of Section 631 of California’s Invasion of Privacy Act (“CIPA”), Cal.
9 Penal Code § 630, *et seq.* For these violations of statutory law, Plaintiff and the Class seek injunctive
10 relief and statutory damages.
11

12 2. Plaintiff and the Class allege that Yahoo intentionally and as part of a common practice,
13 reads, scans, processes, copies, acquires content from, makes copies of content from, creates or gathers
14 data and information from the content of e-mails. Yahoo’s practice of intercepting the content of e-
15 mails, as described above, includes any and all e-mails sent by Plaintiff and Class Members from non-
16 Yahoo e-mail accounts or platforms to Yahoo Mail recipients. Yahoo performs these actions in order to
17 read, attempt to read, understand, eavesdrop upon, intercept, or to learn the content or meaning of the e-
18 mails. Further, Yahoo makes copies or records all or part of e-mails sent by Plaintiff and Class
19 Members to Yahoo Mail recipients.
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22 3. Beginning the first week of June 2013, Yahoo forced all Yahoo Mail users to migrate to
23 its new platform which among other things, included scanning of all incoming and outgoing emails for
24 content. Yahoo admits that the scanning is not limited to virus, malware and spam protection, but also
25 allows Yahoo to create virtual dossiers on users’ tastes, personal history, browsing history, location,
26 and other sensitive information to promote Yahoo’s ability to serve targeted advertising and increase its
27 revenues.
28

1 4. At the time Yahoo reads, attempts to read, learns the content or meaning of, eavesdrops
2 upon, intercepts, and records Plaintiff' and Class Members' electronic communications, Yahoo does so
3 without the consent or authorization of any or all parties to the communications, including Plaintiff and
4 members of the Class.

5 5. Yahoo then uses the information, content, and derivative data obtained from the
6 interception of any and all incoming electronic communications or e-mails to Yahoo Mail users for its
7 own financial advantage, including, but not limited to, targeted advertising, profiling, data collection,
8 and other Yahoo services unrelated to Yahoo Mail. This financial purpose is separate and apart from the
9 provision of Yahoo's email services or the transmission of electronic communications.
10

11 6. In performing the acts alleged herein, Yahoo reads, attempts to read, learns the content
12 or meaning of, eavesdrops upon, and records Plaintiff' and Class Members' electronic communications
13 without Plaintiff' and Class Members' knowledge, consent, or permission in violation of the CIPA. Cal.
14 Penal Code §§ 631, 637 and 637.2. The reading, attempting to read, learning the contents or meaning
15 of, eavesdropping upon, and recording of Plaintiff' and Class Members' communications to Yahoo
16 Mail users that is caused by Yahoo's continual and pervasive use of such devices and techniques
17 seriously threatens the free exercise of personal liberties, and is of the type of behavior that the U.S.
18 Congress and the California Legislature has declared should not be tolerated in a free and civilized
19 society.
20

21 7. Plaintiff and the Class are among the multitude of U.S. residents who have sent
22 electronic communications or emails to a Yahoo Mail user or users, and whose personal liberties have
23 been, and continue to be, intruded upon when these private communications are read or, in the
24 alternative, eavesdropped upon by Yahoo.
25

26 8. Plaintiff and the Class have standing to bring this action because they have suffered
27 injury by way of the unconsented invasion and interception of the content of their electronic
28

1 communications. This injury is directly attributable to Defendant's processes and devices, and
2 Defendant derives a financial windfall from the taking and use of property not its own and acquired by
3 unlawful means, and in the event of a favorable decision, the CIPA provides statutory penalties for
4 Plaintiff for her harm.

5 **II. JURISDICTION AND VENUE**

6 9. This Court has subject matter jurisdiction over this action pursuant to the Class Action
7 Fairness Act ("CAFA"), 28 USC § 1332(d)(2), as Plaintiff brings class claims on behalf of citizens of
8 states different than Yahoo's states of citizenship, and the amount in controversy exceeds \$5 million,
9 and the proposed class contains in excess of 100 members.

10 10. Plaintiff is a citizen of the state of California and Defendant is incorporated in the state
11 of Delaware.

12 11. This Court has personal jurisdiction over Defendant, as Yahoo maintains its
13 headquarters in Sunnyvale, California, which serves as the nerve center of its operations.

14 12. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b) because (1)
15 Yahoo resides in this Judicial District and (2) a substantial part of the events or omissions giving rise to
16 the claims asserted herein occurred in this Judicial District.

17 13. Pursuant to Civil L.R. 3-2(c), an intradistrict assignment to the San Jose Division is
18 appropriate because (1) Yahoo's headquarters is in Sunnyvale, California, and (2) a substantial part of
19 the events or omissions giving rise to the claims asserted herein occurred in Sunnyvale, California.

20 **III. PARTIES**

21 **A. PLAINTIFFS**

22 14. Plaintiff Rebecca Abrams is a natural person who is, and at all times mentioned in this
23 complaint was, a resident of Beverly Hills, California, County of Los Angeles. Plaintiff maintains a
24 non-Yahoo email address, and on numerous occasions since June 1, 2013 sent emails to users of
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1 Yahoo! Mail, and upon information and belief, Yahoo intercepted the email and scanned for content.
2 Plaintiff did not consent to the interception.

3 **B. DEFENDANT**

4 15. Yahoo is a Delaware Corporation whose headquarters and principal place of business is
5 701 First Avenue, Sunnyvale, County of Santa Clara, in the State of California.

6 **IV. BACKGROUND AND COMMON FACTUAL ALLEGATIONS**

7 **A. BACKGROUND**

8 16. Yahoo operates one of the world's largest web-based email services known as "Yahoo
9 Mail," and competes primarily with Microsoft and Google for control of the web-based email market.
10 Yahoo claims more than 275 million Yahoo! Mail users globally. According to Yahoo's 2012 Annual
11 Report, 105 million users send, on average, 91 million emails and 23 million attachments every day.

12 17. Yahoo's first email service was launched in 1997. This original interface is called
13 "Yahoo Mail Classic," and was offered by Yahoo to its users up until June of 2013.

14 18. Yahoo does not charge users a subscription fee or solicit any direct payment by Yahoo!
15 Mail users. Instead, users are displayed ads during the course of their use of Yahoo's email service.

16 19. These display ads are tailored specifically to each user based on personal information
17 collected by Yahoo through various channels, including through scanning of the contents of the users
18 email. These tailored or "targeted" advertisements allow Yahoo to charge advertisers more for delivery
19 of such relevant ads; and, the more accurate Yahoo's information is, the more it can charge advertisers
20 to deliver relevant ads.

21 20. Because Yahoo's revenue model is so fundamentally dependent on advertising, and
22 because it can increase revenues by building more accurate "dossiers" on its users, Yahoo is strongly
23 incentivized to gather as much personal information on users, no matter how sensitive.

B. CHANGES TO TERMS OF USE

1
2 21. In June 2011, Yahoo announced that it would upgrade Yahoo! Mail to a new platform to
3 allow for the scanning of contents of incoming and outgoing emails.

4 22. After some delay, on December 11, 2012, Yahoo CEO Marissa Mayer announced the
5 launch of the new Yahoo! Mail, while permitting users to continue the use of the old version. However,
6 in April 2013, Yahoo announced that around June 2013 all Yahoo! Mail users would be forced onto the
7 new Yahoo! Mail, which explicitly provided for “automated content scanning and analyzing of your
8 communications content.”
9

10 23. Yahoo’s terms of use and privacy policy explicitly provide that:

11
12 Yahoo’s automated systems scan and analyze all incoming and outgoing
13 communications content sent and received from your account (such as
14 Mail and Messenger content including instant messages and SMS
15 messages) including those stored in your account to, without limitation,
16 provide personally relevant product features and content, to match and
17 serve targeted advertising and for spam and malware detection and abuse
18 protection.

19 24. On or around June of 2013, Yahoo discontinued its support of the “Classic” e-mail
20 interface. In doing so, Yahoo informed its users that they were required to switch over to the new
21 Yahoo Mail interface and accept its various Terms of Service and Privacy Policy.

22 25. Thereupon, all users’ Yahoo email communications were scanned by Yahoo and placed
23 into storage.

24 26. Yahoo is not required by any law to scan the emails, nor is Yahoo required to scan the
25 emails for the purposes of providing a service to users.

26 27. The e-mails that are exchanged between Yahoo Mail users and non-Yahoo Mail users
27 contain business and/or private communications, messages and/or attachments. These communications
28 may contain sensitive and/or proprietary content, and are not unlike those messages and packages that

1 are delivered by the United States Postal Service. Plaintiff and members of the Class have an
2 expectation of privacy for the content of their electronic communications.

3 28. The e-mails sent to Yahoo Mail users are transmitted in defined Internet Message
4 Formats with destination address fields specifying the recipients of the message.

5 29. Plaintiff's and Class Members' e-mails sent to Yahoo Mail recipients are transmitted in
6 defined Internet Message Formats with destination address fields specifying the recipients of the
7 message. Pursuant to the destination address fields, e-mail sent to Yahoo Mail users are confined to
8 those persons specified as recipients in the destination address fields.
9

10 30. Pursuant to the destination address fields, Plaintiff's and Class Members' e-mail sent to
11 Yahoo Mail users are confined to those persons specified as recipients in the destination address fields.
12

13 31. The e-mails sent to and from Plaintiff and the Class Members to Yahoo Mail users are
14 "electronic communications" as defined by 18 U.S.C. § 2510(12).

15 32. In providing a web-based application for electronic communications, Yahoo is not a
16 "public utility" under Cal. Penal Code § 631(b), as that term is defined by the California State law,
17 codes, or regulations, or by the California Constitution.
18

19 **C. YAHOO'S TERMS OF SERVICE AND PRIVACY POLICY**

20 33. The content and meaning contained in Plaintiff and Class Members' e-mails which they
21 send to Yahoo Mail users are only to be learned by those persons specified as recipients in the
22 destination address.

23 34. Yahoo's scanning of the emails sent by Plaintiff and Class Members to Yahoo Mail
24 users amounts to the acquisition of the content of the e-mails.
25

26 35. Plaintiff and the Class Members have all been harmed by Yahoo business practices of
27 intruding upon emails. Plaintiff and the Class allege this practice violates Plaintiff' and the Class
28 Members' privacy rights under both federal and state law, and the California Constitution.

1 36. Yahoo's practice of reading, scanning, or reviewing the content of e-mails has continued
2 until the present day.

3 37. Pursuant to 28 U.S.C. § 2510(15), an "electronic communication service" means any
4 service which provides to users thereof the ability to send and receive electronic communications.

5 38. "Yahoo Mail" is an "electronic communication service" (as defined by 28 U.S.C. §
6 2510(15)).

7 39. A Yahoo Mail account holder who sends and receives email through Yahoo Mail is a
8 "user" pursuant to 28 U.S.C. § 2510(13).

9 40. A Yahoo Mail "user" (as defined by 28 U.S.C. § 2510(13)) receives e-mail through a
10 Yahoo Mail account.

11 41. Emails sent and received by Yahoo Mail account holders through Yahoo Mail are
12 "electronic communications" (as defined by 28 U.S.C. § 2510(12)).

13 42. Yahoo's acquisition and use of content from Plaintiff' and Class Members' e-mail sent
14 to Yahoo Mail users, and those e-mails sent from Yahoo Mail users to Plaintiff and Class Members, is
15 not necessary to the transmission of e-mail or to the operation the electronic communication service
16 known as Yahoo Mail.

17 43. Yahoo has the ability to offer Yahoo Mail without intercepting and using the content of
18 the emails made the basis of this suit.

19 44. Yahoo's acquisition and use of content from Plaintiff and Class Members' email and
20 those emails sent to Plaintiff and Class Members is not necessary incident to the protection of the rights
21 or property of the provider of that service.

22 45. The industry standard for webmail electronic communication services does not include
23 the interception and use of the content of the email made the basis of this suit as Yahoo performs on
24 these electronic communications.
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1 46. The ordinary course of business within the industry for webmail electronic
2 communication services for the ability to send and receive electronic communications does not include
3 the interception of content of an electronic communication and the use of its content as Yahoo performs
4 on the email made the basis of this suit.

5 47. Yahoo's services that are not related to the ability to send and receive electronic
6 communications are not electronic communication services.

7 48. Yahoo's targeted advertising and other uses of the email made the basis of this suit are
8 not an electronic communication service as defined by 18 U.S.C. § 2510(15).

9 49. Yahoo's interception and use of content of electronic communications (1) from Plaintiff
10 and Class Members to Yahoo Mail users and (2) to Plaintiff and the Class Members is not within the
11 ordinary course of business of an electronic communication service.
12

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14 **V. CLASS ALLEGATIONS**

15 50. Plaintiff bring this class action, pursuant to Rule 23(a) and (b)(2) and/or (b)(3) of the
16 Federal Rules of Civil Procedure, individually and on behalf of all U.S.-domiciled persons who are not
17 Yahoo customers and who sent emails to or received emails from a Yahoo! Mail user using a
18 @yahoo.com, @ymail.com, or rocketmail.com email address from June 1, 2013 to the present (the
19 "Class").
20

21 51. Excluded from the Class are Defendant, any parent, subsidiary, affiliate or controlled
22 person of the Defendant, as well as the officers and directors (and their immediate family) of any such
23 person.

24 52. The members of the Class are so numerous that joinder of all members is impracticable.
25 While the exact number of Class members is unknown to Plaintiff at the present time and can only be
26 ascertained through appropriate discovery, Plaintiff believes that there are in excess of 5 million
27 members of the Class located throughout the United States. It would be impractical to join the class
28

1 members individually.

2 53. Plaintiff's claims are typical of the members of the Class. Plaintiff and all members of
3 the Class have sustained injuries because of Defendants' unlawful activities alleged herein and are
4 entitled to identical statutory damages. Plaintiff has retained counsel competent and experienced in
5 class actions and consumer protection litigation and intends to pursue this action vigorously. The
6 interests of the Class will be fairly and adequately protected by Plaintiff. Plaintiff has no interests which
7 are contrary to or in conflict with those of the Class that Plaintiff seeks to represent.
8

9 54. A class action is superior to all other available methods for the fair and efficient
10 adjudication of this controversy.

11 55. Common questions of law and fact exist as to all members of the Class and predominate
12 over any questions solely affecting individual members of the Class. Among the many questions of law
13 and fact common to the Class are:
14

- 15 (1) whether emails are communications within the meaning of CIPA;
16 (2) whether Yahoo intercepts emails in transit;
17 (3) whether Yahoo used a "machine, instrument or contrivance;"
18 (4) whether Yahoo obtained consent from non-Yahoo! Mail users or was otherwise
19 "authorized" to intercept the emails;
20 (5) whether Yahoo intercepted "content," and
21 (6) whether Yahoo acted "willfully."

22 **CLAIM FOR RELIEF UNDER CALIFORNIA PENAL CODE § 630, ET SEQ.**

23 56. Plaintiff repeats and realleges each and every allegation contained above.

24 57. California Penal Code § 631 makes it unlawful, by means of any machine, instrument or
25 contrivance, to purposefully intercept the content of a communication over any "telegraph or telephone
26 wire, line, cable or instrument," or to read or attempt to read or learn the contents of any such
27 communications without the consent of all parties to the communication.
28

58. Yahoo is a "person" within the meaning of the CIPA.

1 59. In engaging in conduct alleged herein, Yahoo has and continues to violate California
2 Penal Code § 631 as to Plaintiff and the Class.

3 60. During the relevant time period, Yahoo intercepted the content of email communications
4 from or to class members without their consent using incoming or outgoing email servers which qualify
5 as machines, instruments or contrivances. The identity and name of the “machine,” “instrument,” or
6 “contrivance” used by Yahoo is known by Yahoo and otherwise unknown by Plaintiff and the Class,
7 but will be revealed through discovery.
8

9 61. Yahoo acts willfully when it reads, attempts to read, or learns the content or meaning of
10 Plaintiff’ and Class Members’ e-mails.

11 62. Yahoo does not have the consent of all parties to the communication or it acts in an
12 unauthorized manner when it reads, attempts to read, or learns the content or meaning of Plaintiff’ and
13 Class Members’ e-mails.
14

15 63. Neither Plaintiff nor members of the proposed class consented to the interceptions.
16 Yahoo’s scanning, processing, or copying of Plaintiff’ and Class Members’ email amounts to Yahoo
17 reading, attempting to read, or learning the content or meaning of Plaintiff’ and Class Members’ e-
18 mails.
19

20 64. At the time Yahoo reads, attempts to read, or learns the contents or meaning of Plaintiff’
21 and Class Members’ e-mails, the e-mails are in transit to the Yahoo Mail recipients.

22 65. At the time Yahoo reads, attempts to read, or learns the contents or meaning of Plaintiff’
23 and Class Members’ e-mails, the e-mails are passing over any wire, line, or cable.
24

25 66. As a result of Yahoo’s violations of Section 631, Plaintiff and the Class are entitled to
26 relief under Section 637.2:

- 27 i. Preliminary and injunctive relief;
28 ii. Appropriate declaratory relief

- 1 iii. Monetary damages per class member of \$5,000 or three times actual damages,
2 whichever is greater; and,
3 iv. Reasonable attorneys' fees and costs

4 **VI. PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays for judgment as follows:
6

- 7 a. That this matter be declared a proper class action pursuant to F.R.C.P. 23;
8 b. That the Plaintiff be appointed Class Representative;
9 c. That the Court enter judgment against Defendant for the cause of action alleged against
10 it and for class damages;
11 d. That the Plaintiff be awarded statutory damages as provided by law;
12 e. Reasonable attorneys' fees and other litigation costs reasonably incurred;
13 f. Any further relief the Court deems proper.

14 **VII. JURY DEMAND**

15 Pursuant to Federal Rule of Civil Procedure 38, Plaintiff demands a jury on any issue triable of
16 right by a jury.
17

18 Dated: November 20, 2013

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