

CITATION: Karasik v. Yahoo! Inc., 2020 ONSC 5103
COURT FILE NO.: CV-16-566248-00CP
DATE: 2020/08/26

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:)
)
)
NATALIA KARASIK, RAHUL)
SURYAWANSHI and ELIE CHAMI) *Theodore P. Charney* for the Plaintiffs
Plaintiffs)
)
- and -)
)
)
YAHOO! INC. and YAHOO! CANADA) *Craig Dennis, Q.C.* for the Defendants
CO.)
Defendants)
) *Anthony Tibbs* for Emily Larocque, proposed
) intervenor
)
)
) **HEARD:** In writing

PERELL, J.

REASONS FOR DECISION

A. Introduction

[1] There are two motions before the court in this proposed class action under the *Class Proceedings Act, 1992*¹. The motions raise a critical issue for class action practice when there are rival uncertified multi-jurisdictional proceedings in more than one province. The two motions in the immediate case raise the critical issue of when and how, if ever, a court should, in effect, stay a consent certification motion of a multi-jurisdictional class proceeding for settlement purposes when there is a contested multi-jurisdictional certification motion pending in another proceeding.

[2] In the immediate action, the proposed Representative Plaintiffs, Natalia Karasik of Ontario, Rahul Suryawanshi of Alberta, and Elie Chami of Québec, sue Yahoo! Inc. and Yahoo! Canada Co. (collectively “Yahoo”) on behalf of all Canadian residents with a Yahoo account at any time during the period January 1, 2012 through December 31, 2016.

[3] In the Ontario action, the proposed Class Counsel is Charney Lawyers PC. In the first motion, the proposed Representative Plaintiffs move for a consent certification for the purposes of

¹ S.O. 1992, c. 6.

settlement and for approval of the notice plan for the settlement approval hearing.

[4] There is a competing proposed Class Action in Saskatchewan against Yahoo, in which the proposed Representative Plaintiff is Emily Larocque.² In the Saskatchewan action, the proposed Class Counsel is Merchant Law Group LLP.

[5] In the second motion, Ms. Larocque seeks leave to intervene as an added party to the consent certification motion. She seeks to submit affidavit evidence and to make written submissions in respect of the motion for a consent certification for settlement purposes. Her evident ultimate aim is to have the certification motion dismissed or stayed so that the certification motion can proceed in Saskatchewan. Her apparent argument is that the proposed settlement for which a consent certification is being sought is improvident and not in the best interests of the Class Members who will do better by a contested proceeding in Saskatchewan.

[6] For the reasons that follow: (a) I dismiss Ms. Larocque's motion to intervene and (b) I grant the motion for a consent certification for settlement purposes. My order is without prejudice to Ms. Larocque opposing the approval of the settlement in the Ontario action and appearing with representation at the settlement approval hearing scheduled for December 4, 2020.

B. Factual Background

[7] The Ontario action and the Saskatchewan action arise out of three data breaches; namely, (a) the August 2013 data breach; (b) the November 2014 data breach; and (c) the during 2015 and 2016 data breach, the so-called "Cookies Breach"³.

[8] The actions are against Yahoo, a publicly traded technology company incorporated pursuant to the laws of Delaware and headquartered in Sunnyvale, California. Yahoo offers online products and services for users, including email. Yahoo! Canada is responsible for administering and managing Yahoo user accounts registered in Canada. It is alleged that Yahoo: (a) failed to employ sufficient security measures to protect the proposed Class Members' personal information; (b) delayed notifying impacted individuals of the data breaches; and (c) responded inadequately to the data breaches. In the actions, it is alleged that Class Members suffered identify theft or an increased risk of identity theft and incurred expenses for credit monitoring to mitigate the risks associated with the data breaches. For the purposes of certification of the Ontario action, the proposed Representative Plaintiffs sue for: (a) negligence; and (b) breach of the *Civil Code of Québec*.⁴

[9] Yahoo denies liability for the data breaches.

[10] The Ontario action was commenced by notice of action on December 16, 2016.

[11] Five months later, pursuant to Saskatchewan's *Class Actions Act*,⁵ the Saskatchewan action was commenced on May 16, 2017 in the Court of Queen's Bench for Saskatchewan, Judicial Centre of Regina. It is being case managed by Justice Elson. A certification motion is scheduled

² *Emily Larocque v. Yahoo! Inc. and Yahoo! Canada Co.* Q.B.G. 1245 of 2017.

³ It is alleged that hackers forged cookies to gain direct access to the email accounts of over 3 million Canadian users.

⁴ CQLR c CCQ-1991.

⁵ SS 2001, c. C-12.01.

for November 25-27, 2020.

[12] There are other parallel proposed class actions against Yahoo in the United States, British Columbia,⁶ Alberta⁷ and Québec.⁸ In the Québec action, the plaintiff was Emily Bourbonnière and the proposed Class Counsel was Merchant Law Group. Ms. Bourbonnière applied for authorization (certification) in Québec, but the motion was dismissed.⁹ The Plaintiffs in the Ontario action appeared at the Québec authorization motion as third parties and asked the Court to stay the proceedings for *lis pendens*.

[13] Pre-certification, the proposed Representative Plaintiffs in the Ontario action sought and received an order appointing Charney Lawyers PC, the proposed Class Counsel for the national Ontario action, as representative counsel in the dissolution of Altaba Inc. under the corporate law of the State of Delaware. Charney Lawyers PC sought the representation order to act on behalf of the creditors who have claims against Yahoo in the proposed Ontario national class action.¹⁰

[14] The background to the representation order was that in 2017, Altaba, formerly known as Yahoo, sold Yahoo to Verizon Communications Inc., but Altaba retained fifty percent of the liabilities for the privacy breaches that are the subject matter of the class action. On October 4, 2019, as part of a windup, Altaba decided to distribute its assets to its shareholders while setting aside sufficient funds to pay potential creditor claims. Altaba and Charney Lawyers PC, proposed Class Counsel in the Ontario action, reached an agreement by which Altaba agreed to hold back \$50 million against claims for damages arising out of the privacy breaches in the class action in Ontario. A request to approve the holdback agreement is pending before the Delaware Court.

[15] Ms. Larocque, represented by Merchant Law Group, has entered an objection to the plan of dissolution in the Delaware Court, on the basis that a \$50 million holdback is inadequate and that a holdback of \$1.68 billion is appropriate. Although Ms. Larocque apparently was granted standing to make submissions in the Delaware Court, she has also applied for a representation order in Saskatchewan.

[16] In the Ontario action, a contested certification motion was scheduled for November 21-22, 2019, but the motion was adjourned pending settlement negotiations. The contested certification motion was rescheduled to proceed on March 2-3, 2020, but again the parties agreed to vacate the certification hearing dates pending ongoing discussions.

[17] In the Ontario action, Charney Lawyers PC and McEwan Cooper Dennis LLP, counsel for Yahoo, conducted extensive arm's-length negotiations. There was a mediation on December 13, 2018 in which Jed Melnick of JAMS Mediation, Arbitration and ADR Services, who had mediated a settlement of a parallel action in the U.S., was the mediator. There was a mediation on January 14, 2020, in which the Honourable Frank Newbould, Q.C., was the mediator. Ultimately, the

⁶ On September 26, 2016, an action under the style of cause *Gill v. Yahoo! Canada Co. and Yahoo! Inc.* was filed in Supreme Court of British Columbia at Vancouver with court file number S-168873.

⁷ On December 23, 2016, an action under the style of cause *Sidhu et al. v. Yahoo! Canada, Altaba* was filed in Alberta Court of Queen's Bench at Edmonton with court file number 1603-22837.

⁸ On January 26, 2017, an action originally under the style of cause *Michel Demers v. Yahoo! Inc. and Yahoo! Canada Co.*, later amended to *Brigitte Bourbonnière v. Yahoo! Inc. and Yahoo! Canada Co.*, was filed in Québec Superior Court at Montreal with court file numbers 500-06-000841-177 and 500-06-000842-175 respectively.

⁹ *Bourbonnière c. Yahoo! Inc.*, 2019 QCCS 2624.

¹⁰ *Karasik v. Yahoo! Inc.*, 2020 ONSC 1440.

parties to the Ontario action negotiated the terms of settlement, and they signed a Settlement Agreement on July 6, 2020.

[18] If the Court approves the Settlement Agreement, Yahoo will pay \$20,325,683.58 to settle the claims of the Class Members, including the legal fees and disbursements and the administrative expenses for the settlement administration, in return for a release and a dismissal of the class action.

[19] The settlement is conditional on the following events described at paragraphs 14.1(a)-(c) of the Settlement Agreement: (a) a U.S. settlement receiving final court approval, regardless of whether that approval is appealed; (b) the Saskatchewan action being permanently stayed or dismissed as a class action (although it may continue as an individual action); and (c) the number of Class Members not exceeding the Confidential Opt-Out Threshold.¹¹

[20] The Plaintiffs in the class actions in British Columbia and Alberta support the settlement.

[21] The U.S. settlement was finally approved on July 22, 2020.

[22] If the Ontario action is certified for settlement purposes, Charney Lawyers PC will notify Justice Elson of the order and the parties to the Ontario action will bring an application, under s. 6(2) of Saskatchewan's *Class Actions Act*, for an order that the court refuse to certify the action as a class action pending final settlement approval of the within action and, if approved, the parties will seek to permanently stay the Larocque Action under s. 15 of the Saskatchewan *Class Actions Act*. In seeking a stay or dismissal, Yahoo relies on the forum selection clause in the Class Members' user agreement, which makes Ontario the venue for litigation.

[23] On July 23, 2020, the Plaintiffs in the Ontario action requested a date for the consent certification motion, which was scheduled for the week of August 10, 2020 as a motion in writing, and on August 5, 2020, the Plaintiffs served a certification record for settlement purposes.

[24] Ms. Larocque and her proposed Class Counsel were given notice of the motion for certification for settlement purposes pursuant to the *Canadian Judicial Protocol for the Management of Multi-jurisdictional Class Actions*. She responded with a notice of motion to intervene in the consent motion for certification for settlement purposes.

[25] The parties to the Ontario action oppose granting leave to Ms. Larocque to intervene in the Ontario action.

C. Ms. Larocque's Submissions

[26] Ms. Larocque has appeared in the U.S. proceedings about the dissolution of Altaba to oppose the approval of the \$50 million holdback. As noted above, she has also applied in support of that opposition for a representation order from the Court of Queen's Bench in Saskatchewan.

[27] In the immediate case, Ms. Larocque submits that it would be an affront to the administration of justice if the consent certification motion were to proceed in Ontario before there was a determination of her request for a representation order and before there was a determination by the Delaware Court about the holdback for Canadian proceedings.

¹¹ Pursuant to the Settlement Agreement, the "Confidential Opt-Out Threshold" is the threshold agreed to by the parties, as set out in Schedule X to the Settlement Agreement. The threshold is to be kept confidential and filed and maintained under seal in any court filings. I have been provided with an unsealed copy.

[28] In the immediate case, in her principal submission, Ms. Larocque submits that it would be in the best interests of the Class Members to have a full record and fulsome argument on the certification motion about whether Ontario's action is the preferable procedure for the resolution of the Class Members' claims.

[29] Ms. Larocque submits that while the proposed \$50 million holdback is adequate for the proposed \$20.3 million settlement, the proposed settlement is wholly inadequate compensation for the claims of Class Members particularly for the Class Members of British Columbia, Saskatchewan, Manitoba, and Newfoundland and Labrador, whose privacy legislation¹² would arguably expose Yahoo to much higher liability. She submits that in the absence of real and substantial objections, the judiciary is thwarted in being able to determine if a settlement is fair and reasonable and in the immediate case, it would be preferable for the claims of the class to be determined in the Saskatchewan action.

[30] It appears that at the heart of Ms. Larocque's argument are the submissions that: the preferable procedure is to move forward with the Saskatchewan action; and, the Settlement Agreement and the security for it in the proceedings in the United States is improvident and not in the best interests of the Class Members who would be better served by the determination of a genuinely contested certification motion in Saskatchewan where the court can determine if the proceedings in Ontario are preferable for some or all of the claims of some, or whether the Saskatchewan proceedings are preferable.

D. Should Ms. Larocque Be Granted Leave to Intervene in the Consent Certification Motion?

[31] Ms. Larocque seeks leave to intervene, and she relies on rule 13.01 of the *Rules of Civil Procedure*,¹³ which states:

Leave to Intervene as Added Party

13.01 (1) A person who is not a party to a proceeding may move for leave to intervene as an added party if the person claims,

- (a) an interest in the subject matter of the proceeding;
- (b) that the person may be adversely affected by a judgment in the proceeding; or
- (c) that there exists between the person and one or more of the parties to the proceeding a question of law or fact in common with one or more of the questions in issue in the proceeding.

(2) On the motion, the court shall consider whether the intervention will unduly delay or prejudice the determination of the rights of the parties to the proceeding and the court may add the person as a party to the proceeding and may make such order as is just.

[32] Although the provisions have not yet been proclaimed, Ms. Larocque also relies on sections 1, 2(4)(5), 5(6)(7)(8), 5.1(1)(2) and 12 of the *Class Proceedings Act, 1992*, as amended, which

¹² *Privacy Act*, RSBC 1996, c 373; *Privacy Act*, CCSM c P125; *Privacy Act*, RSS 1978, c P-24; *Privacy Act*, RSNL 1990, c P-22.

¹³ R.R.O. 1990, Reg. 194.

state:

Definitions

1. In this Act,

[...]

“multi-jurisdictional class proceeding” means a proceeding,

(a) brought on behalf of a class of persons that includes residents from two or more provinces or territories of Canada, and

(b) certified as a class proceeding under this Act or under the law of another Canadian jurisdiction, as the case may be;

[...]

Plaintiff's class proceeding

[...]

Notice of certification motion to others

2. (4) In addition to giving notice of a motion for certification in accordance with the rules of court, the person shall give notice of the motion to the representative plaintiff of any class proceeding or proposed class proceeding, including a multi-jurisdictional class proceeding or proposed multi-jurisdictional class proceeding, that,

(a) was commenced in a Canadian jurisdiction other than Ontario; and

(b) involves the same or similar subject matter and some or all of the same class members.

Submissions

2(5) A person to whom notice is given under subsection (4) is entitled to make submissions at the hearing of the motion for certification.

[...]

Existence of other class proceeding

5(6) If a class proceeding or proposed class proceeding, including a multi-jurisdictional class proceeding or proposed multi-jurisdictional class proceeding, has been commenced in a Canadian jurisdiction other than Ontario involving the same or similar subject matter and some or all of the same class members as in a proceeding under this Act, the court shall determine whether it would be preferable for some or all of the claims of some or all of the class members, or some or all of the common issues raised by those claims, to be resolved in the proceeding commenced in the other jurisdiction instead of in the proceeding under this Act.

Same, considerations

(7) In making a determination under subsection (6), the court shall,

(a) be guided by the following objectives:

(i) ensuring that the interests of all parties in each of the applicable jurisdictions are given due consideration,

- (ii) ensuring that the ends of justice are served,
 - (iii) avoiding irreconcilable judgments where possible,
 - (iv) promoting judicial economy; and
- (b) consider all relevant factors, including,
- (i) the alleged basis of liability in each of the proceedings, and any differences in the laws of each applicable jurisdiction respecting such liability and any available relief,
 - (ii) the stage each proceeding has reached,
 - (iii) the plan required to be produced for the purposes of each proceeding, including the viability of the plan and the available capacity and resources for advancing the proceeding on behalf of the class,
 - (iv) the location of class members and representative plaintiffs in each proceeding, including the ability of a representative plaintiff to participate in a proceeding and to represent the interests of class members,
 - (v) the location of evidence and witnesses, and
 - (vi) the ease of enforceability in each applicable jurisdiction.

Motion for determination under subs. (6)

(8) The court, on the motion of a party or class member made before the hearing of the motion for certification, may make a determination under subsection (6) with respect to a proceeding under this Act, and, in doing so, may make any orders it considers appropriate respecting the proceeding, including,

- (a) staying the proceeding; and
- (b) imposing such terms on the parties as the court considers appropriate.

Motion to certify, multi-jurisdictional class proceeding

5.1 (1) The court may make any order it considers appropriate on a motion to certify a multi-jurisdictional class proceeding, including,

- (a) certifying the proceeding if,
 - (i) the conditions set out in subsection 5 (1) are met, and
 - (ii) the court determines, having regard to subsections 5 (6) and (7), that Ontario is the appropriate venue for the proceeding;
- (b) refusing to certify the proceeding if the court determines that it should proceed as a multi-jurisdictional class proceeding or proposed multi-jurisdictional class proceeding in another jurisdiction; or
- (c) refusing to certify the proceeding with respect to class members that the court determines may be included as class members in a class proceeding or proposed class proceeding in another Canadian jurisdiction.

Same

(2) In making an order under clause (1) (a), the court may,

- (a) divide the class into Ontario resident and non-resident subclasses;
- (b) appoint a separate representative plaintiff for each subclass; and
- (c) specify, for the purposes of section 9, the manner and time of opting out of the multi-jurisdictional class proceeding with respect to each subclass.

[...]

Court may determine conduct of proceeding

12. The court, on its own initiative or on the motion of a party or class member, may make any order it considers appropriate respecting the conduct of a proceeding under this Act to ensure its fair and expeditious determination and, for the purpose, may impose such terms on the parties as it considers appropriate.

[33] And Ms. Larocque also relies on s. 8 and 9 of the *Canadian Judicial Protocol for the Management of Multi-jurisdictional Class Actions and the Provision of Class Action Notice*, which state:

8. Unless otherwise directed by any Judge, a Party bringing any of the following motions shall provide all Judges and Counsel in any Action with the Notification List, and a copy of the notice of motion or application (without supporting materials):

- (a) Motions for a stay of proceedings or dismissal based in whole or in part on the existence of other Actions; or
- (b) Certification, if such certification would include class members in other Actions.

Copies of the Motion Record, including supporting materials, shall be provided to all Counsel by email, or in hard copy at the requestor's expense. Copies of the Motion Record shall be provided to the Judges in hard copy, or by email, but only if requested by the Judge.

9. Any Party to a Motion, or Parties to the other Actions who have received notice pursuant to paragraph 8, may move for an order that Counsel, or the Judge in other Actions, should the Judge in the other Actions agree, be allowed to participate in the Motion to the extent permitted by and in accordance with the rules of each Court. The means and nature of the proposed participation shall be as directed by the Judge in each Action.

[34] For the reasons that follow, I am dismissing Ms. Larocque's motion to intervene. For the purposes of this motion, I shall apply the recently enacted but not yet proclaimed amendments to the *Class Proceedings Act, 1992*. I shall do so pursuant to the court's plenary jurisdiction to manage class actions under s. 12 of the current *Class Proceedings Act, 1992*, which states:

Court may determine conduct of proceeding

12. The court, on the motion of a party or class member, may make any order it considers appropriate respecting the conduct of a class proceeding to ensure its fair and expeditious determination and, for the purpose, may impose such terms on the parties as it considers appropriate.

[35] In the immediate case, the Saskatchewan action is a proposed multi-jurisdictional class proceeding and the Plaintiffs have given notice of their motion for certification to Ms. Larocque,

who is the proposed Representative Plaintiff in the Saskatchewan action. Applying s. 2 (5) of the amended *Class Proceedings Act, 1992*, Ms. Larocque is entitled to make submissions at the hearing of the motion for certification. I have heard and considered her submissions.

[36] Insofar as Ms. Larocque makes submissions about the merits and fairness of the settlement agreement, those are matters for the settlement approval hearing scheduled for December 2020 and should not be made part of the consent motion for certification for settlement purposes. Ms. Larocque submissions that the proposed settlement is not in the best interests of the Class Members can be made at the settlement approval hearing. If those submissions are successful, then the settlement will not be approved and the certification for settlement purposes will be rescinded. The pre-settlement status quo will be restored. Thus, Ms. Larocque is not prejudiced by the conditional certification of the action for settlement purposes.

[37] In any event, insofar as Ms. Larocque makes submissions about whether the court should certify the Ontario action for settlement purposes, those submissions are only directed at the preferable procedure criterion for certification.

[38] It should be noted that metaphorically speaking, Ms. Larocque would be shooting herself in the head, so-to-speak, if she challenged the other certification criteria because she would be giving Yahoo lethal ammunition to defeat the certification motion in Saskatchewan by disputing the other certification criteria, which are essentially identical in Saskatchewan and Ontario.

[39] In any event, the only certification criteria challenged by Ms. Larocque in the immediate case, is the preferable procedure criterion. However, there is no meaningful preferable procedure argument that Ms. Larocque can make because it is indisputable that an action certified for settlement purposes is preferable to an uncertified and vigorously contested action in another jurisdiction.

[40] There is no prejudice to Ms. Larocque in this indisputable fact and conclusion because, as already noted, she can oppose the settlement in Ontario, and if her opposition is successful, the consent certification will be rescinded, and moreover and more to the immediate point, it should be mentioned again that the settlement in Ontario is conditional on the Saskatchewan action being permanently stayed or dismissed as a class action (although it may continue as an individual action).

[41] Thus, if Yahoo or the Plaintiffs in the Ontario action are unsuccessful in having the Saskatchewan action stayed or dismissed, there will be no settlement in Ontario and, once again, the certification order in Ontario will be set aside. Ms. Larocque can make all her arguments to the court in Saskatchewan and if she is successful, then she will have the corollary success of rescinding the consent certification and preempting the settlement approval hearing.

[42] For clarity, I add the following two observations. First, I have not ignored Ms. Larocque's request to be able to file evidence; hence, her application to be added as an intervenor with the rights of a party. However, the provisions of the amended *Class Proceedings Act, 1992* just give her standing to make submissions, which I have heard. The amended legislation does not make her a party to the proceedings with a party's right to file evidence.

[43] While I believe I may have the discretion to allow her to file evidence to support her submissions - a matter that I leave for another day to decide - on a consent motion for certification for settlement purposes, I would not exercise that discretion, assuming I have it.

[44] In the immediate case, no useful purposes would be served by converting a motion for a consent certification into a surrogate for a carriage motion, and it is not in the best interests of the Class Members nor is it fair to the Plaintiffs and the Defendants in the immediate proceeding to interfere with a possible settlement of the action. Once again, there is no prejudice to Ms. Larocque. The settlement in the immediate case is conditional on a stay of the Saskatchewan action and conditional on court approval in Ontario.

[45] Second, it is trite to say that the *Class Proceedings Act, 1992* is to be interpreted to achieve the goals of the class proceedings regime in a way that is also fair to the defendant. It would not be fair to either the plaintiffs or to the defendants in the immediate case to prejudge in the context of a consent motion for a conditional certification for settlement purposes whether the settlement is fair, reasonable and in the best interests of the Class Members, nor would it be fair to, in effect, convert a consent motion for certification into a carriage fight between competing multi-jurisdictional Class Counsel.

[46] In reaching my decision that Ms. Larocque's motion should be dismissed, it is not necessary for me to discuss any of the cases relied upon by the parties; namely: *DALI 675 Pension Fund v SNC Lavalin*¹⁴; *Ottawa v. McLean*¹⁵; *Outerbridge v. Romeo*¹⁶; *Kidd v. Canada Life Assurance Co.*¹⁷; *Fairview Donut Inc. v. TDL Group Corp.*¹⁸; and *1176560 Ontario Ltd. v. Great Atlantic & Pacific Co. of Canada Ltd.*¹⁹ These cases are all distinguishable. These cases do not address how to apply the amended *Class Proceedings Act, 1992* in the particular circumstances of a consent certification motion for settlement purposes. That is a novel procedural issue.

[47] For these reasons, I dismiss Ms. Larocque's motion, and I turn to the Plaintiffs' certification motion.

E. Should the Ontario Action be Certified for Settlement Purposes?

[48] The Court is required to certify the action as a class proceeding where the following five-part test in s. 5 of the *Class Proceedings Act, 1992* is met: (1) the pleadings disclose a cause of action; (2) there is an identifiable class of two or more persons that would be represented by the representative plaintiff; (3) the claims of the class members raise common issues; (4) a class proceeding would be the preferable procedure for the resolution of the common issues; and (5) there is a representative plaintiff who: (a) would fairly and adequately represent the interests of the class; (b) has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members of the proceeding, and (c) does not have, on the common issues for the class, an interest in conflict with the interests of other class members.

[49] The fact that an action is certified on consent for settlement purposes does not dispense with the need to meet the certification criteria, but they may be less rigorously applied in a

¹⁴ 2019 ONSC 6512.

¹⁵ 2019 FCA 309.

¹⁶ 2017 ONSC 6674.

¹⁷ [2011] O.J. No. 4751 (S.J.C.).

¹⁸ [2008] O.J. No. 4720 (S.C.J.).

¹⁹ (2002), 62 O.R. (3d) 535 (S.C.J.).

settlement context.²⁰ For the reasons that I have outlined above, one of the certification criteria that does not require a rigorous analysis is the preferable procedure criterion.

[50] Pursuant to s. 5 (1) of the *Class Proceedings Act, 1992*, having reviewed the motion record and having considered Ms. Larocque's submissions, I am satisfied that all of the criteria for certification have been satisfied and also that the notice and the notice plan should be approved.

F. Conclusion

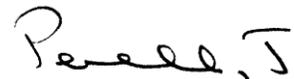
[51] For the above reasons, I dismiss Ms. Larocque's motion and I certify the Ontario action for settlement purposes.

[52] Because the procedural issues in the immediate case are novel and unsettled in light of the amendments to the *Class Proceedings Act, 1992*, there shall be no order as to costs.

[53] Order to go as asked in the form of the Order attached as Schedule A to these Reasons for Decision.

[54] In the circumstances of the Covid-19 emergency, these Reasons for Decision are deemed to be an Order of the court that is operative and enforceable without any need for a signed or entered, formal, typed order.

[55] The parties may submit formal orders for signing and entry once the court re-opens; however, these Reasons for Decision are an effective and binding Order from the time of release.



Perell, J.

Released: August 26, 2020

²⁰ *Osmun v. Cadbury Adams Canada Inc.*, [2009] O.J. No. 5566 at para. 21 (S.C.J.).

Schedule 1

Schedule “A”

Court File No. CV-16-566248-00CP

ONTARIO

SUPERIOR COURT OF JUSTICE

THE HONOURABLE) _____, THE _____

)

MR. JUSTICE PERELL) DAY OF _____, 2020

NATALIA KARASIK, RAHUL SURYAWANSHI, and ELIE CHAMI

Plaintiffs

AND:

YAHOO! INC. and YAHOO! CANADA CO.

Defendants

CV-19-00614734-00CP

ONTARIO

SUPERIORR COURT OF JUSTICE

ELIE CHAMI

Plaintiff

And

ALTABA INC., VERIZON COMMUNICATIONS INC., VERIZON MEDIA,
OATH HOLDINGS INC., and OATH (CANADA) CORP.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION made by the plaintiffs for an Order: certifying the within action as a class proceeding for settlement purposes only; approving a notice of proposed settlement to the class; and approving the method of dissemination of the notice of proposed settlement to the class, was heard on _____, 2020, at Toronto, Ontario.

ON BEING ADVISED of the defendants' consent, and that the parties have entered into a settlement agreement, as signified by the Consolidated Settlement Agreement dated June 9, 2020, subject to court approval,

AND ON READING the materials filed, including the motion record of the plaintiffs and the affidavit of Devra Charney, made August 5, 2020, and on hearing the submissions of counsel for the plaintiffs and counsel for the defendants,

1. **THIS COURT ORDERS** that this Order incorporates herein, and makes a part hereof, the Consolidated Settlement Agreement attached hereto as Schedule "1" (the "Settlement Agreement"). Unless otherwise provided herein, the definitions set out in the Settlement Agreement apply to this Order.
2. **THIS COURT ORDERS** that the within action is certified as a class proceeding, on a preliminary basis, for settlement purposes only, subject to the terms of the Settlement Agreement and the conditions set out below.

Class Definition

3. **THIS COURT ORDERS** that the Settlement Class is defined as all Canadian residents with Yahoo accounts at any time during the period January 1, 2012 through December 31, 2016, inclusive (the "Settlement Class").

Representative Plaintiffs

4. **THIS COURT ORDERS** that Natalia Karasik, Rahul Suryawanshi, and Elie Chami are appointed as the representative plaintiffs for the Settlement Class.

Settlement Class Counsel

5. **THIS COURT ORDERS** that Charney Lawyers PC is appointed as counsel to the Settlement Class (“Class Counsel”).

6. **THIS COURT ORDERS** that Schedule X to the Settlement Agreement shall be sealed and kept confidential.

Common Issues

7. **THIS COURT ORDERS** that, for the purposes of settlement, the following issues are common to the Settlement Class:

Negligence

- (1) Did one or both of the defendants owe the Class Members a duty of care to take reasonable steps to establish, maintain and enforce appropriate security safeguards against a cyberattack to limit the exposure of the Class Members’ account information?
- (2) Did one or both of the defendants owe the 2014 and Cookie Class Members a duty to warn/notify those Class Members in a reasonably timely manner with sufficient information about those Breaches?
- (3) Did one or both of the defendants breach the standard of care reasonably expected of them in the circumstances? If so, how?
- (4) Did one or both of the defendants have a duty to offer class members credit monitoring type services?

Breach of articles 35, 36, and 37 of the CCQ

- (5) With respect to Class Members resident in Québec, are one or more of the defendants liable to the Classes for breaches of articles 35, 36, and/or 37 of the CCQ?

Damages

- (6) Are the defendants or any one of them liable for damages to the Class for negligence and breach of the *CCQ*?

Settlement Approval Hearing

8. **THIS COURT ORDERS** that it will decide:

- (a) Whether to approve the Settlement Agreement as fair, reasonable and in the best interests of the Class Members;
- (b) Whether to approve the fee request of the Class Counsel; and
- (c) Any other matters as the Court may deem appropriate

at a virtual hearing to be held on Friday, December 4, 2020, beginning at 12:00 PM EST at Osgoode Hall, 130 Queen Street West, Toronto, Ontario;

Conditions of Certification

9. **THIS COURT ORDERS** that if (i) the Settlement Agreement is terminated for any reason set out therein or (ii) any specified condition to the Settlement Agreement is not satisfied and any party seeks to terminate the Settlement Agreement:

- (a) this Order shall be set aside, be of no further force or effect, and be without prejudice to any party;
- (b) the Settlement Agreement and all proceedings in connection therewith shall be null and void, except insofar as expressly provided in the Settlement Agreement, and without prejudice to the rights of the plaintiffs and the defendants;
- (c) this class proceeding shall immediately be decertified as a class proceeding pursuant to s. 10 of the *Class Proceedings Act, 1992* (the “CPA”) without prejudice to the plaintiffs’ ability to reapply for certification; and

(d) each party to the within action shall be restored to his, her, or its respective position as it existed immediately prior to the execution of the Settlement Agreement.

10. **THIS COURT ORDERS** that any certification of a Settlement Class under this Order is for settlement purposes only and shall not constitute, nor be construed as, an admission on the part of any of the defendants in this action that certification of this class action is appropriate for any other purpose.

11. **THIS COURT ORDERS** that entry of this Order is without prejudice to the rights of the defendants to terminate the Settlement Agreement as provided in the Settlement Agreement.

Notice

12. **THIS COURT ORDERS** that the long form and short form notices of class action and proposed settlement substantially in the form attached hereto as Schedule “2” and “3”, respectively are hereby approved.

13. **THIS COURT ORDERS** that the Claims Administrator shall cause the short form notice to be sent in English and French via direct e-mail to all Class Members who are recorded in the defendants’ records and persons who have provided a valid email address to Class Counsel no later than 30 days after receipt of those records from the defendants’ and Class Counsel.

14. **THIS COURT ORDERS** that the Claims Administrator shall cause the short form notice to be published in an English-language newspaper (with national circulation which may or may not include Quebec) and a French-language newspaper (with Quebec circulation), to be selected by Class Counsel, as an advertisement with a maximum size of a ¼ page.

15. **THIS COURT ORDERS** that the long form notice in English and in French shall be:

(a) posted on the settlement website to be established by the Claims Administrator;
and

(b) posted on Class Counsel's website.

16. **THIS COURT ORDERS** that the costs of preparing, printing, publishing, mailing and otherwise disseminating the short form and long form notices shall be paid by the Claims Administrator from the Settlement Funds in accordance with section 2.4 of the Settlement Agreement.

17. **THIS COURT ORDERS** that the form and manner of notice as set out above and approved herein, are the best notice practicable under the circumstances, constitute sufficient notice to all persons entitled to notice, and satisfy the requirements of notice under s. 19 of the *Class Proceedings Act*.

The Claims Administrator

18. **THIS COURT ORDERS** that the Claims Administrator be responsible for the following: (a) disseminating notice to the Settlement Class; (b) certifying by affidavit to the Court compliance with paragraphs 12 to 15 of this Order; (c) establishing a website for purposes of posting the Notice in English and French, the Settlement Agreement and related documents; (d) creating an opt-out form (the "Opt-Out Form"); (e) accepting and maintaining documents sent from Class Members, including receiving Opt-Out Forms and other documents relating to the settlement administration; (f) certifying by affidavit to the Court the number of requests to opt out by no later than five days before the settlement approval hearing; and (g) all other responsibilities designated to the Claims Administrator in the Settlement Agreement.

19. **THIS COURT ORDERS** that the costs of the Claims Administrator in completing the responsibilities as set out in paragraph 16 shall be paid to the Claims Administrator from the Settlement Funds in accordance with section 2.4 of the Settlement Agreement.

Opt-out Rights

20. **THIS COURT ORDERS** that any Class Member who wishes to be excluded from the Settlement Class shall provide a completed Opt-Out Form to the Claims Administrator in hard copy or electronic copy, to be received on or before Friday, November 27, 2020 at 5:00 p.m. EST, which date will be inserted into the notice to be disseminated prior to publication.

21. **THIS COURT ORDERS** that all requests to opt-out shall include a complete Opt-Out Form.

22. **THIS COURT ORDERS** that any person who validly opt outs of the Settlement Class shall be excluded from the Settlement Class, shall not be bound by the Settlement Agreement, shall have no rights with respect to the Settlement Agreement, and shall receive no payments as provided in the Settlement Agreement.

23. **THIS COURT ORDERS** that any Class Member that does not provide a valid completed Opt-Out Form as set out in paragraphs 19 and 20 of this Order shall automatically be included in the Settlement Class.

The Honourable Mr. Justice Perell

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

NATALIA KARASIK, RAHUL SURYAWANSHI, and ELLIE CHAMI

Plaintiffs

-and-

YAHOO! INC. and YAHOO! CANADA CO.

Defendants

CV-19-00614734-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

ELIE CHAMI

Plaintiff

And

ALTABA INC., VERIZON COMMUNICATIONS INC., VERIZON MEDIA,
OATH HOLDINGS INC., and OATH (CANADA) CORP.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into in the Karasik Action and Chami Action by and among the named Plaintiffs, Natalia Karasik, Rahul Suryawanshi, and Ellie Chami (the **"Named Plaintiffs" and "Plaintiffs"**) and the Defendants, Yahoo! Inc. and Yahoo! Canada Co., Altaba Inc. (formerly known as Yahoo! Inc.), Verizon Communications Inc., Verizon Media, Oath Holdings Inc. and Oath (Canada) Corp., by and through their respective counsel.

BACKGROUND

Whereas:

- A. In September 2016 to December 2016, and October 2017, it was announced that the Defendants had been the target of criminal cyberattacks on their computer systems in which the attackers gained unauthorized access to the personal information of Yahoo users and various other individuals (the “**Data Breaches**”).
- B. As a result of the Data Breaches, multiple putative class action lawsuits were filed against the Defendants in courts across the country, alleging that the Defendants failed to properly protect personal information in accordance with their duties, had inadequate data security, and delayed notifying potentially impacted individuals of the breaches.
- C. On or about September 26, 2016, an action under the style of cause *Gill v. Yahoo! Canada and Yahoo! Inc.* was filed in Supreme Court of British Columbia at Vancouver with court file number S-168873 (the “**Gill Action**”).
- D. On or about December 16, 2016, an action under the style of cause *Natalia Karasik v. Yahoo! Inc. and Yahoo! Canada Co.* was filed in Ontario Superior Court of Justice at Toronto with court file number CV-16-566248-00CP (the “**Karasik Action**”).
- E. On or about December 23, 2016, an action under the style of cause *Sidhu et al. v. Yahoo! Canada, Altaba* was filed in Alberta Court of Queen’s Bench at Edmonton with court file number 1603-22837 (the “**Sidhu Action**”).
- F. On or about January 26, 2017, an action originally under the style of cause *Michel Demers v. Yahoo! Inc. and Yahoo! Canada Co.*, later amended to *Brigitte Bourbonniere v. Yahoo! Inc. and Yahoo! Canada Co.*, was filed in Quebec Superior Court at Montreal with court file numbers 500-06-000841-177 and 500-06-000842-175 respectively (the “**Bourbonniere Action**”).
- G. On or about May 16, 2017, an action under the style of cause *Emily Larocque v. Yahoo! Inc. and Yahoo! Canada Co.* was filed in Saskatchewan Court of Queen’s Bench at Regina with court file number QBG 1242 of 2017 (the “**Larocque Action**”).
- H. On or about February 20, 2019, an action under the style of cause *Chami v. Alibaba Inc., et al.* was filed in Ontario Superior Court of Justice at Toronto with court file

number CV-19-00614734-00CP (the “**Chami Action**”).

- I. On June 9, 2019 the court in the Bourbonniere Action dismissed the plaintiff’s motion for authorization.
- J. In the Karasik Action, the Plaintiffs filed a motion to certify the Karasik Action as a class action, the Defendants filed materials opposing that motion and both counsel for the Plaintiffs and Defendants conducted cross-examinations on the supporting affidavits and expert reports tendered in support of their respective positions on the certification motion.
- K. Counsel for the Plaintiffs and Defendants in the Karasik Action conducted extensive arm's-length negotiations, including two day-long mediations, in which Mr. Jed Melnick, who mediated settlement of the parallel action in the United States, and subsequently the Honourable Frank Newbould, Q.C., participated as mediators, regarding the substance and procedure of a possible national class settlement prior to entering into this Settlement Agreement.
- L. On or about January 14, 2020, the Settling Parties agreed to settlement terms.
- M. The Plaintiffs, as well as Class Counsel, believe the Released Claims have merit. The Plaintiffs and Class Counsel, however, recognize and acknowledge the expense and length of continued proceedings that would be necessary to prosecute the Released Claims against the Defendants through trial and appeals, and the importance of providing timely relief to Class Members. The Plaintiffs and Class Counsel also have taken into account the uncertain outcome and risk of any litigation, especially in complex actions such as this litigation, as well as the difficulties and delays inherent in such litigation. The Plaintiffs and Class Counsel are mindful of the inherent problems of proof under, and possible defenses to, the Released Claims. The Plaintiffs and Class Counsel believe that the proposed Settlement confers substantial benefits upon the Class. Based on their evaluation of all of these factors, the Plaintiffs and Class Counsel have determined that the Settlement is in the best interests of the Class.
- N. The Defendants deny any liability to the Plaintiffs and the Class. The Defendants believe they have meritorious defenses to all of the claims raised in this Litigation.

Nevertheless, the Defendants recognize and acknowledge the expense and length of continued proceedings that would be necessary to defend the Litigation through trial and appeals. In agreeing to enter into this Settlement, the Defendants also have taken into account the uncertain outcome and risk of any litigation, especially in complex actions such as this Litigation, as well as the difficulties and delays inherent in such litigation.

- O. It is in intention of parties to resolve the disputes and claims which they have between them as set forth below.

AGREED TERMS

IT IS HEREBY AGREED, by and among the Settling Parties that, subject to approval of the Court, the Litigation and the Released Claims shall be fully and finally compromised, settled, and released, and that the Consortium Actions will be dismissed or permanently stayed with prejudice subject to and upon the terms and conditions described below.

I. DEFINITIONS

1. In addition to words and terms defined elsewhere in this Settlement Agreement, the following words and terms shall have the definitions stated in this Section.

- A. "CAD\$" means Canadian dollars, being the lawful currency of Canada.
- B. "USD\$" means United States dollars, being the lawful currency of the United States.
- C. "Action" or "Litigation" means the Consortium Actions.
- D. "Administrative Expenses" means all of the expenses incurred in the administration of this Settlement, including, without limitation, all expenses or costs associated with the Notice Plan and providing Notice to the Settlement Class, locating Settlement Class Members, processing claims, determining the eligibility of any person to be a Settlement Class Member, and administering, calculating and distributing the Net Settlement Fund to Settlement Class Members. Administrative Expenses also include all reasonable third-party fees and expenses incurred by the Claims Administrator in administering the terms of this Agreement.
- E. "Affiliates" means current and former directors, officers, employees, counsel, consultants, agents, insurers, related entities, subsidiaries, parents, predecessors, and successors.
- F. "Agreement" or "Settlement Agreement" means this Settlement Agreement, including its exhibits.
- G. "Altaba" means Altaba Inc. (formerly known as Yahoo! Inc.). Yahoo! Inc. was renamed to Altaba Inc. after the sale of Yahoo's operating business to Verizon

Communications Inc., effective June 13, 2017. Under the terms of an Amended Reorganization Agreement that was executed in connection with the asset sale to Verizon, Oath Holdings Inc. and Altaba each are responsible for 50 percent of any potential post-closing liabilities attributable to the Action.

- H. "Alternative Compensation" means compensation to Settlement Class Members as set forth in section 4 of this Settlement Agreement.
- I. "Alternative Compensation Claim Form" means the form (in paper or on the Settlement Website) developed by the Claims Administrator to submit Category B Claims for Alternative Compensation or, alternatively, Category C Claims for Credit Services, in accordance with the terms of sections 4 and 5 herein.
- J. "Appeal Term" means the time an appeal or other review expires or if any appeal or other review has been filed, the time it takes for the order appealed to be affirmed without material change or the appeal to be dismissed or otherwise disposed of, with no other appeal or other review pending, and the time for further appeals or other review having expired.
- K. "Approval Date" means the date on which the Court issues the Approval Order.
- L. "Approval Hearing" means the hearing to be held by the Court on a date to be scheduled to decide whether to approve the Settlement, whether to approve the fee request of Class Counsel, and any other matters as the Court may deem appropriate.
- M. "Approval Order" means the order of the Court approving the Settlement Agreement and the Settlement contemplated hereunder.
- N. "Business Days" means Monday, Tuesday, Wednesday, Thursday, and Friday, excluding holidays observed in Ontario.
- O. "Canadian Currency Equivalent" means the CAD\$ or Canadian dollars that can be purchased with USD\$ or United States dollars at the prevailing rate of exchange as of the date the Settlement Fund is deposited by the Defendants in accordance with section 2.1 of this Settlement Agreement.

- P. "Category A Claims" means claims described in section 3 of this Settlement Agreement brought in respect of Out-of-Pocket Costs and by Paid Users and Small Business Users that are approved by the Claims Administrator.
- Q. "Category B Claims" means claims described in section 4 of this Settlement Agreement brought for Alternative Compensation that are approved by the Claims Administrator.
- R. "Category C Claims" means claims described in section 5 of this Settlement Agreement brought for Credit Services that are approved by the Claims Administrator.
- S. "Certification Order for Settlement Purposes" means an order by the Court that preliminarily certifies a Settlement Class, approves the forms and procedure for providing Notice and establishes a procedure for Settlement Class Members to object to or opt-out of the Settlement, without material change to the Parties' agreed-upon proposed notice order attached hereto as Exhibit A.
- T. "Chami Action" means the action entitled *Chami v. Alibaba Inc., et al.* filed in Ontario Superior Court of Justice at Toronto Registry with court file number no. CV-19-00614734-00CP).
- U. "Claims Administrator" means the person selected by Class Counsel following a tender process, which person may change with the agreement of counsel for the Parties, or, absent agreement, with the approval of the Court on a showing of good cause.
- V. "Claims Commencement Date" means, unless otherwise agreed by the Settling Parties, the Effective Date.
- W. "Claim Form" means the document a Class Member must submit to the Claims Administrator to seek relief under section 3 (Category A Claims), section 4 (Category B Claims) and section 5 (Category C Claims) of this Settlement Agreement.
- X. "Claims Period" means the period of time that Class Members can submit claims to the Claims Administrator and, unless otherwise agreed between the Settling

Parties, shall commence on the Effective Date and end six (6) months thereafter.

- Y. "Claims Program" means the claims program set out at section 8 of this Settlement Agreement.
- Z. "Class", "Class Members" or "Settlement Class Members" means a member of the Settlement Class.
- AA. "Class Counsel" means Charney Lawyers PC, 151 Bloor Street West, Suite 602, Toronto, Ontario, M5S 1S4.
- BB. "Class Period" means January 1, 2012 through December 31, 2016, inclusive.
- CC. "Conditions Precedent" means the conditions to this Settlement set out in section 14 of this Settlement Agreement.
- DD. "Confidential Opt-Out Threshold" means the threshold agreed to by the Parties, as set out in Schedule X to this Settlement Agreement, which Schedule shall be kept confidential and filed and maintained under seal in any court filings.
- EE. "Consortium Actions" means the Karasik Action, the Gill Action, the Sidhu Action and the Chami Action.
- FF. "Court" means the Ontario Superior Court of Justice.
- GG. "Credit Services" means the credit monitoring services of at least one year described in Section 5 of this Settlement Agreement.
- HH. "Data Breaches" means the data breaches alleged in the Karasik Action.
- II. "Defendants" means Yahoo! Inc., Yahoo! Canada., Altaba Inc. (formerly known as Yahoo! Inc.), Verizon Communications Inc., Verizon Media, Oath Holdings Inc., and Oath (Canada) Corp.
- JJ. "Effective Date" means the first Business Day after the conditions in section 15.1 of this Settlement Agreement have been satisfied, or where provided for, waived by the Defendants.
- KK. "Entity" means any corporation, partnership, limited liability company, association,

trust, or other organization of any type.

- LL. “Escrow Account” means the account maintained by the Claims Administrator as described in section 2.2 of this Settlement Agreement.
- MM. “Gill Action” means the action under the style of cause *Gill v. Yahoo! Canada and Yahoo! Inc.* filed in the Supreme Court of British Columbia at the Vancouver Registry with court file number no. S-168873).
- NN. “Honorariums” means compensation awarded and paid to Settlement Class Representatives in recognition of their role in this litigation, as set forth in section 10 of this Settlement Agreement.
- OO. “Karasik Action” means the action under the style of cause *Natalia Karasik v. Yahoo! Inc. and Yahoo! Canada Co.* filed in Ontario Superior Court of Justice at the Toronto Registry with court file number no. CV-16-566248-00CP).
- PP. “Larocque Action” means the action under the style of cause *Emily Larocque v. Yahoo! Inc. and Yahoo! Canada Co.* filed in Saskatchewan Queen’s Bench at the Regina Registry with court file number QBG 1242 of 2017.
- QQ. “Levy” means the 10% Levy under the *Class Proceedings Regulation*, O. Reg. 771/92, and the *Law Society Act*, R.S.O. 1990 c. L.8 which is payable to the Class Proceedings Fund.
- RR. “Named Plaintiffs” means the individuals identified as Plaintiffs in the Karasik Action and Chami Action.
- SS. “Net Settlement Fund” means the amount of funds that remain in the Settlement Fund after funds are paid or allocated for payment from the Settlement Fund in accordance with section 2.2 of this Settlement Agreement.
- TT. “Notice” means notice of the proposed class action settlement to be provided to Settlement Class Members pursuant to the Notice Plan.
- UU. “Notices of the Data Breach” means the notices and commencement dates for Notice as alleged in the Karasik Action, which notices were circulated to Class Members over several weeks.

- VV. “Notice Date” means the first date on which Notice is disseminated to Settlement Class Members.
- WW. “Notice Plan” means the settlement notice program developed by the Claims Administrator in accordance with the terms of section 7 herein and as approved by the Court.
- XX. “Oath” means Oath Inc., Oath Holdings Inc. and Oath (Canada) Corp. (now Verizon Media Canada Corp.), subsidiaries of Verizon Communications Inc. unless specified individually. Under the terms of an Amended Reorganization Agreement that was executed in connection with the asset sale to Verizon, Oath Holdings Inc. and Altaba each are responsible for 50 percent of the potential post-closing liabilities attributable to the Action.
- YY. “Opt-Out Deadline” means ninety (90) days from the Notice Date, the date by which a Class Member’s valid opt-out form must be received in hard copy or electronic copy by the Claims Administrator if such Class Member wishes to opt-out of the Settlement.
- ZZ. “Out-of-Pocket Costs” means documented out-of-pocket costs or expenditures that a Settlement Class Member actually incurred due to one or more of the Data Breaches, as set forth in section 3. Out-of-Pocket Costs may include, without limitation: unreimbursed fraud losses or charges; professional fees incurred in connection with identity theft or falsified tax returns; fees or expenses incurred for, or as a result of, credit freezes; the cost of credit monitoring or insurance; and if the Settlement Class Member has actually incurred documented out of pocket cost, time spent performing tasks traceable to mitigating the impact of one or more of the Data Breaches at CAD\$25.00 per hour to a maximum of fifteen hours for each Class Member in the aggregate for all three Data Breaches; and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges. For Small Business Users, Out-of-Pocket Costs include wages or fees paid for the performance of tasks due to one or more of the Data Breaches.
- AAA. “Out-of-Pocket Claims Form” means the form (in paper or on the Settlement Website) developed by the Claims Administrator to submit Category A Claims for Out-of-Pocket Claims in accordance with the terms of section 3 herein.

- BBB. "Paid User" means Settlement Class Members that paid Yahoo for advertisement free or premium email services during the Class Period.
- CCC. "Paid User Claim Form" means the form (in paper or on the Settlement Website) developed by the Claims Administrator to submit Category A Claims by Paid Users in accordance with the terms of section 3 herein.
- DDD. "Parents" means, with respect to any Entity, any corporation or other entity that owns or controls, directly or indirectly, at least a majority of the securities or other interests that have by their terms ordinary voting power to elect a majority of the board of directors or others performing similar function of such Entity.
- EEE. "Parties" means the Settlement Class Representatives, on behalf of themselves and the Settlement Class, and Defendants.
- FFF. "Person" means an individual or legal entity or their respective successors or assigns.
- GGG. "Release" means the release, waiver and discharge of the Released Parties by the Plaintiffs and each Class Member from their or its Released Claims as set out in this Settlement Agreement.
- HHH. "Released Claims" means any and all claims, demands, actions, causes of action, and suits based in whole or in part on or related to or arising from any of the facts alleged in any of the Consortium Actions, including the Data Breaches, or consequences thereof, or any act, omission or determination of Class Counsel or the Claims Administrator in connection with the administration of this Settlement, and includes all other claims, demands, actions, causes of action of any nature whatsoever, including, but not limited to, any claims for violation of federal, provincial, territorial, or other law (whether in contract, tort, or otherwise, including statutory and injunctive relief, common law, property, warranty, and equitable claims), and also including Unknown Claims that could be asserted by Class Members against the Released Parties in the Litigation, or in any other complaint, action, or litigation in any other court or forum, including, but not limited to, the Larocque Action, based upon or related to or arising from any of the facts alleged in any of the Consortium Actions, including

the Data Breaches, or consequences thereof, or the administration of this Settlement.

- III. "Released Parties" means Yahoo and their current, former, and future affiliates, parents, related entities, successors and subsidiaries, directors, officers, agents, and employees, including without limitation Altaba, Verizon and Oath.
- JJJ. "Settlement" means the settlement of the Consortium Actions by and between the Parties, and the terms thereof as stated in this Settlement Agreement.
- KKK. "Settlement Agreement" means this Settlement Agreement.
- LLL. "Settlement Class" means all Canadian residents with Yahoo accounts at any time during the period January 1, 2012 through December 31, 2016, inclusive.
- MMM. "Settlement Class Member" means a member of the Settlement Class.
- NNN. "Settlement Fund" means the Canadian Currency Equivalent of \$15 million United States Dollars (USD\$15,000,000) paid in accordance with section 2.1 of this Settlement Agreement and any interest on or other income or gains earned while such amount is held in the Trust Account or Escrow Account.
- OOO. "Settlement Website" means the public website that will provide information and key filings regarding the Settlement, including FAQs and other materials educating Class Members on the content of the Settlement and the approval process.
- PPP. "Settling Parties" means the Named Plaintiffs and the Defendants.
- QQQ. "Sidhu Action" means the action under the style of cause *Sidhu et al. v. Yahoo! Canada, Altaba, and Yahoo Holdings* filed in Albert Court of Queen's Bench at the Edmonton Registry with court file number no. 1603-22837).
- RRR. "Small Business User" means Settlement Class Members that paid for Yahoo or Aabaco Small Business services during the Class Period.
- SSS. "Small Business User Claim Form" means the form (in paper or on the Settlement Website) developed by the Claims Administrator to submit Category A Claims by

Small Business Users in accordance with the terms of section 3 herein.

- TTT. "Subsidiaries" means with respect to any Entity, any corporation, limited liability company, partnership or other entity of which such Entity owns or controls, directly or indirectly, at least a majority of the securities or other interests that have by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions with respect to such corporation, limited liability company, partnership or other entity.
- UUU. "Successor" means, with respect to a natural person, that person's heir, and, with respect to an Entity, any other Entity that through merger, buyout, or any other means, acquires that Entity's duties, rights, obligations, shares, debts, or assets.
- VVV. "Taxes and Tax-Related Expenses" means: (i) any and all applicable taxes, duties and similar charges imposed by a government authority (including any estimated taxes, interest or penalties) arising in any jurisdiction, if any, with respect to the income or gains earned by or in respect of the Settlement Fund, including, without limitation, any taxes that may be imposed upon the Defendants or their counsel with respect to any income or gains earned by or in respect of the Settlement Fund for any period while it is held in the Trust Account or Escrow Account; (ii) any other taxes, duties and similar charges imposed by a government authority (including any estimated taxes, interest or penalties) relating to the Settlement Fund that the Claims Administrator determines are or will become due and owing, if any; and (iii) any and all expenses, liabilities and costs incurred in connection with the taxation of the Settlement Fund (including without limitation, expenses of tax attorneys and accountants).
- WWW. "Unknown Claims" means any and all Released Claims that any Class Member does not know to exist against any of the Released Parties and that, if known, might have affected their decision to enter into or to be bound by the terms of this Settlement. The Plaintiffs and Class Members acknowledge that they may hereafter discover facts in addition to or different from those that they now know or believe to be true concerning the subject matter of this release, but nevertheless fully, finally, and forever settle and release any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, that may exist now, which may have already existed, or which may hereafter exist, based upon the alleged

Data Breaches as described in the Action, without regard to subsequent discovery or existence of such different or additional facts concerning each of the Released Parties. The foregoing waiver includes, without limitation, an express waiver to the fullest extent permitted by law by the Plaintiffs and the Class Members.

- XXX. “U.S. Settlement” means the proposed settlement of the U.S. actions consolidated in *re: Yahoo! Inc. Customer Data Security Breach Litigation*, Case No. 5:16-MD-02752-LHK which settlement was obtained on an interim basis on July 20, 2019 and is scheduled to be finally approved at a hearing scheduled for April 2, 2020.
- YYY. “Verizon” means Verizon Communications Inc.. In June 2017, Yahoo! Inc. and Verizon completed an asset sale transaction wherein Verizon acquired all outstanding shares of Yahoo Holdings Inc., a wholly-owned subsidiary of Yahoo! Inc., which, immediately prior to the consummation of the sale, owned the assets and liabilities associated with Yahoo’s operating business. Upon closing the sale of Yahoo’s operating business to Verizon, effective June 13, 2017, Yahoo Holdings was transferred to and became a wholly-owned subsidiary of Verizon. Effective January 1, 2018, Yahoo Holdings Inc. was renamed Oath Holdings Inc.
- ZZZ. “Yahoo” means Yahoo! Inc.; Yahoo Holdings Inc.; Yahoo! Canada Co., Aabaco Small Business, LLC, and Altaba Inc. (formerly known as Yahoo! Inc.) and their current, former, and future Affiliates, Subsidiaries, and Successors. Accordingly, herein, Yahoo refers to both Oath and Altaba.

II. SETTLEMENT CONSIDERATION

- 2.1 In consideration for the Release provided for by the Settlement and for the dismissal or permanent staying of the Consortium Actions with prejudice, under the terms of this Settlement Agreement, the Defendants will, within ten (10) Business Days of the Settlement Agreement being executed by all Parties, pay the Canadian Currency Equivalent of \$15 million United States Dollars (USD\$15,000,000) (the “**Settlement Funds**”) into an interest-bearing trust account maintained by counsel for the Defendants, which account will provide for an interest rate equal to the best available GIC rate available at a chartered bank for funds locked in until April 1, 2020 and, after that date, an interest rate equal to the then prevailing open rate (the “**Trust Account**”).
- 2.2 Except for the payment in section 17.3, the Defendants will not be required to pay more than the Settlement Fund, all in, under this Settlement and the Settlement Fund is the sole monetary payment the Defendants will make under this Settlement.
- 2.3 Upon the Effective Date, the Settlement Fund will be released to the Claims Administrator to be held in the Escrow Account.
- 2.4 As further described in this Agreement, the Settlement Fund shall be the sole source of monetary funds for the following:
- (a) the Taxes and Tax-Related Expenses described in section 2.9 and 2.10;
 - (b) the Legal Fees and Disbursements described in section 9;
 - (c) the Administrative Expenses for the Settlement Administration described in section 8;
 - (d) the Honorariums described in section 10;
 - (e) the Levy; and
 - (f) the Claims, which will be paid out of the balance of the Settlement Fund remaining upon paying the amounts set out in sections 2.4 (a) to (e) (the “**Net Settlement Fund**”) as follows:

- (a) up to CAD\$4 million to pay claims for:
 - (i) Out-of-Pocket Costs claims as described in section 3;
 - (ii) Paid User claims as described in section 3; and
 - (iii) Small Business User claims as described in section 3;

(collectively, the “**Category A Claims**”)

- (b) the balance to pay claims for:
 - (i) Alternative Compensation as described in section 4 (the “**Category B Claims**”); and
 - (j) Credit Services as described in section 5 (the “**Category C Claims**”).

2.5 The Settlement Fund will not be released from the Escrow Account, unless: (i) expressly authorized by this Settlement Agreement; and (ii) approved by the Court, except in the event section 15.3 of the Settlement Agreement applies in which case the Settlement Fund will be returned to the Defendants without the need of Court approval in accordance with that section.

2.6 The Claims Administrator, subject to such supervision and direction of the Court and/or counsel as may be necessary or as circumstances may require, shall administer and/or oversee distribution of the Settlement Fund pursuant to this Agreement.

2.7 The Claims Administrator is responsible for communicating with Settlement Class Members regarding the distribution of the Net Settlement Fund and amounts paid under the Settlement.

2.8 All funds held in the Escrow Account relating to the Settlement shall be deemed to be in the custody of the Court upon the Effective Date of the Settlement until such time as the funds shall be distributed to Settlement Class Members or otherwise disbursed pursuant to this Settlement Agreement and/or further order of the Court.

- 2.9 The Parties agree that the Claims Administrator shall be responsible for filing tax returns and any other tax reporting for or in respect of interest earned on the Settlement Fund and paying from the Settlement Fund any Taxes and Tax-Related Expenses owed with respect to the Settlement Fund.
- 2.10 All Taxes and Tax-Related Expenses relating to interest earned on the Settlement Fund shall be paid out of the Settlement Fund and without prior order of the Court shall be paid, for the period the Settlement Fund is held in the Trust Account, by the Defendants and, for the period the Settlement Fund is held in the Escrow Account, the Claims Administrator. Further, the Settlement Fund shall indemnify and hold harmless the Parties and their counsel for Taxes and Tax-Related Expenses (including, without limitation, taxes payable by reason of any such indemnification payments).
- 2.11 The Parties and their respective counsel have made no representation or warranty with respect to the tax treatment by any Settlement Class representative or any Settlement Class Member of any payment or transfer made pursuant to this Agreement or derived from or made pursuant to the Settlement Fund.
- 2.12 Each Settlement Class Representative and Settlement Class Member shall be solely responsible for the tax consequences to him, her, or it of the receipt of funds from the Settlement Fund pursuant to this Agreement.
- 2.13 Defendants and their counsel shall not have any responsibility for or liability whatsoever with respect to: (i) any act, omission, or determination of Class Counsel, the Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment, or distribution of the Settlement Fund; (iii) the formulation, design, or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes and Tax-Related Expenses incurred in connection with the taxation of the Settlement Fund or the filing of any returns. Defendants also shall have no

obligation to communicate with Settlement Class Members and others regarding amounts paid under the Settlement.

2.14 The Settlement Class Representatives and Class Counsel shall not have any liability whatsoever with respect to: (i) any act, omission or determination of the Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment, or distribution of the Settlement Fund; (iii) the formulation, design, or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes and Tax-Related Expenses incurred in connection with the taxation of the Settlement Fund or the filing of any returns.

2.15 The Defendants will provide an accounting indicating any interest earned and Tax and Tax-Related Expenses paid during the period the Settlement Fund is held in the Trust Account.

III. CATEGORY A CLAIMS – Out-of-Pocket Costs, Paid Users and Small Business Users

3.1 Settlement Members who have Out-of-Pocket Costs may request payment of their Out-of-Pocket Costs by submitting an Out-of-Pocket Costs Claim Form (either in paper form or on the Settlement Website) to the Claims Administrator accompanied by an attestation for the Out-of-Pocket Costs incurred, and documentation of Out-of-Pocket Costs as to which documentation should naturally exist and has been retained or is readily obtainable, as detailed on the Out-of-Pocket Costs Claim Form.

3.2 The Claims Administrator shall verify that each person who submits an Out-of-Pocket Costs Claim Form is a Settlement Class Member and shall have the sole discretion and authority to determine whether and to what extent an Out-of-Pocket Costs Claim Form reflects valid Out-of-Pocket Costs. To the extent the Claims Administrator determines a claim for Out-of-Pocket Costs is deficient, the Claims Administrator shall, within fifteen (15) days of making such a

determination, notify the Settlement Class Member of the deficiencies and give the Settlement Class Member thirty (30) days to cure the deficiencies. The Claims Administrator shall have the sole discretion and authority to determine whether the Settlement Class Member has cured the deficient claim such that it reflects valid Out-of-Pocket Costs.

- 3.3 Out-of-Pocket Costs for preventative measures, such as obtaining credit monitoring services, insurance or credit freezes, shall be considered to be due to one or more of the Data Breaches if the Settlement Class Member states that they believe the costs were incurred as a result of one or more of the Data Breaches. Out-of-Pocket Costs for unreimbursed losses related to identity theft, falsified tax returns, or other alleged wrongdoing (collectively “Misconduct”), or for attempting to remedy Misconduct, shall be considered to be due to one or more of the Data Breaches if: (i) the Misconduct occurred within four months of Notice of one or more of the Data Breaches; (ii) the Settlement Class Member states that he, she, or it believes the Misconduct is connected to one or more of the Data Breaches; and (iii) the Misconduct involved possible misuse of the type of personal information accessed in one or more of the Data Breaches (*i.e.*, names, email addresses, telephone numbers, birth dates, passwords, and security questions of Yahoo account holders, or from contents of the Class Member’s email account, such as financial communications and records containing credit cards, retail accounts, banking, account passwords, tax documents, and social insurance numbers from transactions conducted by email).
- 3.4 All Paid Users shall be eligible to receive an amount of up to 25% of the cost of services paid for between August 1, 2013 and December 31, 2016, upon submission of a valid Paid User Claim (as determined by the Claims Administrator).
- 3.5 The Claims Administrator shall verify that each person who submits a Paid User Claim Form is a Settlement Class Member and a Paid User and shall have the sole discretion and authority to determine whether and to what extent a Paid User Claim Form reflects valid Paid User services. To the extent the Claims Administrator determines a claim for Paid User services is deficient, the Claims

Administrator shall, within fifteen (15) days of making such a determination, notify the Settlement Class Member of the deficiencies and give the Settlement Class Member thirty (30) days to cure the deficiencies. The Claims Administrator shall have the sole discretion and authority to determine whether the Settlement Class Member has cured the deficient claim such that it reflects valid Paid User services.

- 3.6 All Small Business Users shall be eligible to receive an amount of up to 25% of the cost of services paid for between August 1, 2013 and December 31, 2016 upon submission of a valid Small Business User Claim Form (as determined by the Claims Administrator).
- 3.7 The Claims Administrator shall verify that each person who submits a Small Business User Claim Form is a Settlement Class Member and a Small Business User and shall have the sole discretion and authority to determine whether and to what extent a Small Business User Claim Form reflects valid Small Business User services. To the extent the Claims Administrator determines a claim for Small Business User services is deficient, the Claims Administrator shall, within fifteen (15) days of making such a determination, notify the Settlement Class Member of the deficiencies and give the Settlement Class Member thirty (30) days to cure the deficiencies. The Claims Administrator shall have the sole discretion and authority to determine whether the Settlement Class Member has cured the deficient claim such that it reflects valid Small Business User services.
- 3.8 Each Settlement Class Member who submits a Claim Form for valid Out-of-Pocket Costs, Paid User services and Small Business services (as determined by the Claims Administrator) shall receive a payment equal to the lesser of: (i) the amount of the Settlement Class Member's valid Out-of-Pocket Costs and recoverable Paid User services and Small Business services; or (ii) \$25,000.00; provided, however, that the payment may be reduced as provided in section 6.1.

IV. CATEGORY B CLAIMS – Alternative Compensation

- 4.1 Settlement Members who do not request payment of their Out-of-Pocket Costs, and recoverable Paid User services and Small Business services may request

compensation for wasted time and inconvenience responding to one or more of the Data Breaches by submitting an Alternative Compensation Claim Form (either in paper form or on the Settlement Website) to the Claims Administrator accompanied by an attestation in respect of the time spent responding to one or more of the Data Breaches as detailed on the Alternative Compensation Claim Form.

- 4.2 The Claims Administrator shall verify that each person who submits an Alternative Compensation Claim Form is a Settlement Class Member and shall have the sole discretion and authority to determine whether and to what extent an Alternative Compensation Claim Form reflects wasted time and expense responding to one or more of the Data Breaches. To the extent the Claims Administrator determines a claim for Alternative Compensation is deficient, within fifteen (15) days of making such a determination, the Claims Administrator shall notify the Settlement Class Member of the deficiencies and give the Settlement Class Member thirty (30) days to cure the deficiencies. The Claims Administrator shall have the sole discretion and authority to determine whether the Settlement Class Member has cured the deficient claim such that it reflects valid losses actually incurred.
- 4.3 Alternative Compensation Claims shall be eligible to receive CAD\$25 per hour for each hour spent responding to the Data Breaches, not to exceed CAD\$125 for each Data Breach where the Class Member received Notices of the Data Breach upon submission of a valid Alternative Compensation Claim Form (as determined by the Claims Administrator); provided, however, that the payment may be reduced as provided in section 6.2.

V. CATEGORY C CLAIMS – Credit Services

- 5.1 Settlement Members who submit an Alternative Compensation Claim Form and who qualify for Alternative Compensation may elect to waive that compensation in favour of Credit Services, should there be a sufficient residue in the balance of the Net Settlement Fund to fund Credit Services. Credit Services for a term of up to two years have an estimated retail value of CAD\$478.80 per Class Member.

- 5.2 Settlement Members who make this election must request Credit Services by indicating this election on, and submitting, an Alternative Compensation Claim Form (either in paper form or on the Settlement Website) to the Claims Administrator as detailed on the Alternative Compensation Claim Form.
- 5.3 The Claims Administrator shall verify that each person who submits a Alternative Compensation Claim Form electing Credit Services: (i) is a Settlement Class Member; and (ii) otherwise qualifies for Alternative Compensation. Ambiguities or deficiencies on the face of the Alternative Compensation Claim Form shall be resolved by the Claims Administrator. To the extent there is any ambiguity with respect to a Settlement Class Member's election for Credit Services, and the Claims Administrator cannot resolve the ambiguity, the ambiguous Claim Form shall default to a claim for Alternative Compensation. However, for either ambiguities or deficiencies, the Claims Administrator shall first ask the Settlement Class Member to cure the ambiguity or deficiency, and in doing so, may use its discretion to determine the most efficient and effective means of communicating with the Settlement Class Member, whether by email, telephone, or mail. Disputes with respect to any Claim Form shall be resolved by the Claims Administrator.

VI. RESIDUE OF NET SETTLEMENT FUND

- 6.1 In the event that the total of the Category A Claims exceeds CAD\$4 million, any excess funds after Category B Claims have been paid will go to fund Category A Claims. If there remains a shortfall in funds in respect of Category A Claims, then the available funds will be distributed to Category A Claims *on a pro rata basis*. In the event that the total of the Category A Claims is less than CAD\$4 million, the available funds will be distributed to top up any shortfall in funds in respect of Category B Claims, or, if there is no shortfall in Category B Claims, to fund Credit Services, if those services are available.
- 6.2 In the event the total of Category B Claims, excluding those who elect Credit Services (i.e. Category C Claims):
- (a) exceeds the portion of the Net Settlement Fund allocated to Category B Claims, then Category C Claims will be treated as Category B Claims

and the available funds will be distributed to Category B Claims *on a pro rata basis*.

(b) is less than the portion of the Net Settlement Fund allocated to Category B Claims, any excess funds, and any excess as contemplated in section 6.1 in respect of the Category A Claims, will pay for Credit Services. In the event these excess funds are sufficient to purchase Credit Services then Class Counsel will make reasonable efforts to purchase the best product available with the funds available, with a goal of two years of Credit Services. If the surplus is insufficient to purchase Credit Services for Settlement Members who elect Credit Services, all Category C Claims will be treated as Category B Claims and paid accordingly and Credit Services will not be purchased.

6.3 In the event there is a residue which exceeds the total of all Claims as assessed, the residue shall be allocated equally to all Settlement Class Members whose Claims were at least partially approved excluding Claims submitted solely in respect of Paid User services and Business User services.

6.4 The Net Settlement Fund described in section 2.4 of this Settlement Agreement shall be the sole source of monetary funds for the relief set forth in sections 3, 4, 5 and 6 of this Settlement Agreement.

VII. CLASS NOTICE, OPT-OUTS, AND OBJECTIONS

7.1 Notice shall be disseminated pursuant to the Certification Order for Settlement Purposes.

7.2 The Claims Administrator is responsible for distributing and disseminating the Notice in accordance with the Notice Plan, which plan will generally comprise: direct email notice to Settlement Class Members (the “**Direct Email Notice**”); and publication of advertisements with a maximum size of ¼ page in an English-language paper (with national circulation which may or may not include Quebec) and a French-language newspaper (with Quebec circulation) to be selected by Class Counsel.

7.3 Subject to compliance with the privacy laws of Canada, the United States and

any other relevant jurisdiction, the Defendants shall provide the Claims Administrator with the names and last known email addresses of Settlement Class Members, as they can best estimate based on their records, no later than five (5) Business Days after the date on which the Court enters the Certification Order for Settlement Purposes. To the extent that Yahoo has reasonably available names or other identifying information about Settlement Class Members, but not email addresses, those names and other identifying information shall also be provided to the Claims Administrator for use in verifying the identity of Settlement Class Members to whom emailed notice is not sent, but who respond to either publication notice and/or the Settlement Website. For clarity, Defendants shall not, however, be required to issue Notice by physical, as opposed to electronic, mail.

- 7.4 Class Counsel shall provide the Claims Administrator with the Class Counsel registration data including names and last known email addresses of Settlement Class representatives and any other putative Class Member who has reported updated identifying information to Class Counsel, no later than five (5) Business Days after the date on which the Court enters the Certification Order for Settlement Purposes.
- 7.5 Defendants shall provide the Claims Administrator with billing and payment records related to all Paid Users and Small Business Users during the Class Period sufficient to allow the Claims Administrator to determine the amount each Paid User and Small Business User paid to Defendants for their services and the accounts to which those services were rendered.
- 7.6 The Notice shall explain the procedure for Settlement Class Members to opt-out and exclude themselves from the Settlement Class by notifying the Claims Administrator in writing, postmarked no later than the Opt-Out Deadline.
- 7.7 The opt-out form shall include a section:
 - (a) requiring class members to confirm and acknowledge they will be excluded from receiving any compensation from the Settlement and by opting out do not wish to participate as a Settlement Class Member; and

- (b) requiring an explanation for opting out.
- 7.8 Each written request for exclusion must set forth the name of the individual seeking exclusion and can only request exclusion for that one individual.
- 7.9 Individual Settlement Class Members must sign the opt-out form with the signature of a witness, and provide contact information, including address, telephone number, and email. Corporate Settlement Class Members must include the name of the corporation and the name and position of the authorised signing officer and must sign the opt-out form with the signature of a witness, and provide contact information including address, telephone number, and email.
- 7.10 If the reason provided for opting-out suggests to the Claims Administrator that a Settlement Class Member does not understand the opt-out process or the effect of participating in the Settlement (for example the Settlement Class Member states she is opting out because the class member erroneously believes there is a financial cost to participating in the settlement) then the Claims Administrator shall contact the Settlement Class Member and determine whether the member intended to validly opt-out.
- 7.11 The Notice shall explain the procedure for Settlement Class Members to object to the Settlement. Written objections are to be provided no later than ninety (90) days after the Notice Date and filed with the Court five (5) days before the Approval Hearing. The written objection must include the objector's name, a statement indicating the basis for the objector's belief that he, she, or it is a Member of the Settlement Class (to the extent the objector did not receive Notice), and the basis for objecting.

VIII. ADMINISTRATION OF SETTLEMENT – CLAIMS PROGRAM

- 8.1 Class Counsel will retain the Claims Administrator to administer this Settlement and the Claims Program.
- 8.2 The Claims Administrator will not implement the Claims Program in accordance with this Settlement Agreement until the Effective Date. The Defendants shall have the option to withdraw from this Settlement Agreement, and to render it

null and void, if the number of Class Members excluding themselves from the Settlement by opt-ing out before the Opt-Out Deadline exceeds the Confidential Opt-Out Threshold.

- 8.3 The Claims Administrator shall perform the functions specified in this Settlement Agreement and Exhibit A, including, but not limited to, overseeing administration of the Settlement Fund; providing, with the assistance of the Defendants, Notice; effecting publication of Notice and a media plan; establishing and operating the Settlement Website and a toll-free number; administering the Claims processes; and distributing compensation and, if applicable, Credit Services thereunder according to the processes and criteria set forth herein.
- 8.4 The duties of the Claims Administrator, in addition to other responsibilities that are described in this Agreement, include:
- (a) obtaining from Defendants, pursuant to section 7.3, the names and last known email addresses, to the extent reasonably available, of Settlement Class Members;
 - (b) obtaining from Yahoo, pursuant to section 7.3, information to the extent reasonably available, necessary to establish a reasonably practical procedure to verify Settlement Class Members;
 - (c) obtaining from Yahoo, pursuant to section 7.5, information sufficient to establish billing and payment information related to all Paid Users and Small Business Users during the Class Period;
 - (d) effecting the Notice Plan in accordance with the procedures set forth in section 9;
 - (e) establishing and maintaining a post office box for mailed written notifications of exclusion from the Settlement Class;
 - (f) establishing and maintaining the Settlement Website that, among other things, allows Settlement Class Members to submit claims electronically;
 - (g) establishing and maintaining a toll-free telephone line for Settlement

Class Members to call with Settlement-related inquiries, and answering the questions of Settlement Class Members who call with or otherwise communicate such inquiries;

- (h) responding to any mailed or emailed Settlement Class Member inquiries;
- (i) mailing to Settlement Class Members who request it paper copies of the Notice and/or Claim Forms;
- (j) processing all written notifications of exclusion from the Settlement Class;
- (k) providing monthly reports and, no later than ten (10) days after the deadline for Settlement Class Members to exclude themselves from the Settlement, provide a final report to Class Counsel and Defendants' counsel that summarizes the number of written notifications of exclusion received that week, the total number of written notifications of exclusion received to date, and other pertinent information as requested by Class Counsel and Defendants' counsel;
- (l) in advance of the Approval Hearing, preparing affidavits to submit to the Court that: (i) attest to implementation of the Notice Plan in accordance with the Certification Order for Settlement Purposes; and (ii) identify each Settlement Class Member who timely and properly provided written notification of exclusion from the Settlement Class; reviewing, determining the validity of, and processing all claims submitted by Settlement Class Members, pursuant to criteria set forth in sections 3, 4 and 5;
- (m) pursuant to section 3 herein, at the close of the Claims Period, provide monetary payment, either electronically or by Mail, to Settlement Class Members for Out-of-Pocket Costs, Paid User damages, and Small Business User damages;
- (n) pursuant to sections 4 and 5 herein, at close of the Claims Period, provide activation instructions or monetary payment, either electronically

or mail, to Settlement Class Members for (i) Alternative Compensation or, (ii) if it selected by a Settlement Class Member and available, Credit Services;

- (o) providing monthly reports and a final report to Class Counsel and Defendants' counsel that summarize the number and amount of claims since the prior reporting period, the total number and amount of claims received to date, the number and amount of any claims approved and denied since the prior reporting period, the total number and amount of claims approved and denied to date, and other pertinent information as requested by Class Counsel and Defendants' counsel;
- (p) paying from the Escrow Account the amounts described in section 2.2 of this Settlement Agreement; and
- (q) performing any function related to Settlement administration at the agreed-upon instruction of both Class Counsel and Defendants' counsel, including, but not limited to, verifying that cash payments have been distributed in accordance with sections 3, 4 and 5.

8.5 The decisions of the Claims Administrator in respect of claims submitted through the Claims Program, including but not limited to all Category A Claims, Category B Claims and Category C Claims, are final and binding and there shall be no right of appeal or judicial review from the decisions of the Claims Administrator.

IX. CLASS COUNSEL FEES AND DISBURSEMENTS

9.1 Class Counsel will seek in its fee approval materials a fee of 24% of the Settlement Fund, plus HST, reimbursement of all disbursements and HST paid on those disbursements (the "**Legal Fees and Disbursements**") or such other terms as the Court at the approval hearing may direct.

9.2 The Notice to the Settlement Class of the proposed settlement will state that it is proposed that the Legal Fees and Disbursements will be paid to Class Counsel subject to Court approval at the Approval Hearing, and that the Levy, calculated as 10% of the Settlement Fund, net of Legal Fees and Disbursements will be payable to the Law Foundation.

- 9.3 The amounts owing to Class Counsel and the Law Foundation will be paid from the Settlement Fund, after the Effective Date, in trust to Class Counsel and to the Law Foundation.
- 9.4 This section does not apply to the payment to Class Counsel provided for in section 17.3 of the Settlement Agreement, which payment is to be paid in accordance with that section.
- 9.5 The Defendants will forgo the costs award made in their favour in the Karasik Action on September 24, 2019.

X. HONORARIUMS FOR NAMED PLAINTIFFS

- 10.1 As part of their motion seeking final approval of the Settlement at the Approval Hearing, Plaintiffs intend to seek Honorariums for the Named Plaintiffs in the following amounts, subject to Court approval:
- (i) Natalia Karasik - CAD\$7,500;
 - (ii) Rahul Suryawanshi - CAD\$7,500; and
 - (iii) Elie Chami - CAD\$7,500.
- 10.2 The Honorariums approved by the Court will be paid out of the Settlement Fund to Class Counsel in trust in accordance with the Court's order.

XI. SETTLEMENT APPROVAL PROCESS

Certification Order for Settlement Purposes

- 11.1 The Settling Parties will seek from the Court a Certification Order for Settlement Purposes that provides, *inter alia*, for the following with respect to the administration of the Settlement:
- (a) the certification of the *Karasik Action* as a class proceeding, on a preliminary basis, for settlement purposes only, with a class definition for settlement purposes which is as follows:

All Canadian residents with Yahoo

*accounts at any time during the period
January 1, 2012 through December 31,
2016, inclusive:*

- (b) the appointment of the Claims Administrator;
- (c) the approval of the Notice Plan; and
- (d) the scheduling of the Approval Hearing.

11.2 The Settling Parties will book one day in or after May 2020 to apply, by consent, for the Certification Order for Settlement Purposes.

Approval Hearing

11.3 The Settling Parties will bring on the Approval Hearing as soon as is reasonably possible after the Notice period has expired, provided that, before that hearing, the Conditions Precedent in section 14.1 of this Settlement Agreement are satisfied or waived by the Defendants.

11.4 At the Approval Hearing, the Court will decide whether to approve the Settlement and whether to approve the Legal Fees and Disbursements requested of Class Counsel and any other matters as the court may deem appropriate.

XII. RELEASED CLAIMS

Class Members' Claims

12.1 Upon the Effective Date, the Plaintiffs and each Class Member shall be deemed to have, and by operation of the Approval Order shall have, released, waived, and discharged the Released Parties from his, her, or its Released Claims.

Total Satisfaction of Released Claims

12.2 Any benefits offered or obtained pursuant to the Settlement Agreement are in full, complete, and total satisfaction of all of the Released Claims against the Released Parties, the benefits are sufficient and adequate consideration for each and every term of this Release, and this Release shall be irrevocably binding upon Class Members who do not opt-out of the Settlement Class.

Release Not Conditioned on Claim or Payment

- 12.3 The Release shall be effective with respect to all Class Members, regardless of whether those Class Members ultimately file a Claim or receive compensation under this Settlement Agreement.

Basis for Entering Release

- 12.4 Class Counsel acknowledge that they have conducted sufficient independent investigation and discovery to enter into this Settlement Agreement and that they execute this Settlement Agreement freely, voluntarily, and without being pressured or influenced by, or relying on any statements, representations, promises, or inducements made by the Released Parties or any person or entity representing the Released Parties, other than as set forth in this Settlement Agreement.

Material Term

- 12.5 The Plaintiffs and Class Counsel hereby agree and acknowledge that section 12 (Released Claims) was separately bargained for and constitutes a key, material term of the Settlement Agreement that shall be reflected in the Approval Order.

XIII. AGREEMENT TO COOPERATE TO EFFECTUATE SETTLEMENT

- 13.1 Counsel for all Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement. The persons signing this Settlement Agreement on behalf of each Party warrants that he/she is authorized to sign this Settlement Agreement on behalf of that Party.
- 13.2 The Parties and their respective counsel will cooperate with each other, act in good faith, and use their best efforts to effect the implementation of the Settlement Agreement, which cooperation will include: cooperation by Class Counsel as reasonably necessary to obtain a permanent stay or dismissal of the Larocque Action; Class Counsel seeking orders dismissing the Consortium Actions and/or consenting to the Defendants' motions to dismiss the Consortium Actions; reasonable assistance by the Defendants to Class Counsel to prepare Court materials for the approval of the Settlement Agreement, including filing

affidavit evidence to support any estimate of Class Members.

- 13.3 In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement Agreement, the Parties may seek the assistance of the Court to resolve such disagreement.
- 13.4 The Parties further agree to make all reasonable efforts to ensure the timely and expeditious administration and implementation of the Settlement Agreement and to minimize the costs and expenses incurred therein.
- 13.5 Following approval by the Court of the Settlement Agreement and the Legal Fees and Disbursements, Class Counsel will provide banking instructions and a Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities) (Form W-8BEN-E) to facilitate the payments to Class Counsel as provided for in sections 2.4(b), 9.1, 9.3 and 17.3 of the Settlement Agreement. Following approval by the Court of the Settlement Agreement and the Honorariums, the Named Plaintiffs will provide banking instructions and a Request for Taxpayer Identification Number and Certification (Form W-9) or a Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals) (Form W-8BEN), as applicable, to facilitate the payments of the Honorariums to the Named Plaintiffs as provided for in sections 2.4(d) and 10 of the Settlement Agreement.

XIV. CONDITIONS PRECEDENT

- 14.1 This Settlement Agreement is conditional on:
 - (a) the US Settlement receiving final court approval, regardless of whether that approval is appealed;
 - (b) the Larocque Action being, after the Appeal Period, permanently stayed as a class action (although it may continue as an individual action) or dismissed; and

- (c) the number of Class Members excluding themselves from the Settlement before the Opt-Out Deadline not exceeding the Confidential Opt-Out Threshold.
- 14.2 The Defendants will notify Class Counsel promptly of the outcome of the U.S. Settlement final approval hearing.
- 14.3 The Defendants may, at their sole discretion, waive the Conditions Precedent in paragraphs 14.1(a), 14.1(b) and 14.1(c) of the Settlement Agreement on notice to Class Counsel, which conditions are for the sole benefit of the Defendants.

XV. EFFECTIVE DATE AND TERMINATION

- 15.1 The Effective Date of the Settlement shall be the first Business Day after all of the following conditions have occurred:
- (a) the Defendants and Class Counsel execute this Agreement;
 - (b) the Court enters the Certification Order for Settlement Purposes, without material change to the Parties' agreed-upon proposed Certification Order for Settlement Purposes;
 - (c) Notice is provided to the Settlement Class consistent with the Certification Order for Settlement Purposes;
 - (d) the Court enters the Approval Order, without material change to the Parties' agreed-upon proposed final approval order and judgment attached hereto as Exhibit B;
 - (e) the Approval Order has become final because the Appeal Term has expired; and
 - (f) the Conditions Precedent have been satisfied, or waived by the Defendants in accordance with section 14 of this Settlement Agreement;
 - (g) the Consortium Actions have been dismissed with prejudice or permanently stayed.

- 15.2 In the event that the Court declines to enter the Certification Order for Settlement Purposes, or the conditions in section 15.1 of this Settlement Agreement are not all satisfied, or where provided for, waived by the Defendants, the Defendants may at their sole discretion terminate this Agreement on five (5) Business Days written notice from counsel for the Defendants to Class Counsel.
- 15.3 In the event this Agreement is terminated pursuant to section 15.2, the Settlement Fund together with any interest or other income earned thereon, less any Taxes and Tax-Related Expenses paid or due with respect to such income, will be returned to the Defendants. In the event this Agreement is terminated pursuant to section 15.2, costs incurred to date by the Claims Administrator will be paid by the Defendants.
- 15.4 Except as otherwise provided herein, in the event the Settlement is terminated, the Parties to this Agreement, including Settlement Class Members, shall be deemed to have reverted to their respective status in the Consortium Actions immediately prior to the execution of this Agreement and the execution of any term sheet between the Parties and, except as otherwise expressly provided, the Parties shall proceed in all respects as if this Agreement any term sheet and any related orders had not been entered. In addition, the Parties agree that in the event the Settlement is terminated:
- (a) any Court orders preliminarily or finally approving certification of the Settlement Class and any other orders entered pursuant to the Agreement shall be deemed null and void and vacated and shall not be used in or cited by any person or entity in support of claims or defenses or in support or in opposition to a class certification motion; and
 - (b) this Agreement shall become null and void, and the fact of this Settlement and that Defendants did not oppose certification of any class under this Settlement, shall not be used or cited by any person or entity, including in any contested proceeding relating to certification of any proposed class.

XVI. MODIFICATION OF THE AGREEMENT

16.1 The terms and provisions of this Settlement Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court; provided, however, that after entry of the Approval Order, the Parties may by written agreement effect such amendments, modifications, or expansions of this Settlement Agreement (including all exhibits hereto) without further notice to the Class or approval by the Court if such changes are consistent with the Court's Approval Order and do not limit the rights of Class Members under this Settlement Agreement.

XVII. DELAWARE PROCEEDINGS

17.1 Altaba has sufficient assets to pay its ½ share of the Settlement Fund, notwithstanding that it will be initiating proceedings under section 280 of the General Corporation Law of the State of Delaware in connection with Altaba's liquidation and dissolution (the "**Delaware Proceedings**"). Subject to obtaining the Representation Order described in section 17.2, Altaba and Class Counsel agree that Altaba shall hold back USD\$50 million (which amount includes Altaba's share of the Settlement Fund) in the Delaware Proceedings to satisfy any claims made in the Consortium Actions, and any national class that is certified as a result of those actions, to cover the circumstances of (i) the Settlement not being approved by the Court or (ii) one or more of the conditions described in section 15.1 of the Settlement Agreement not being met, or where provided for, waived by the Defendants (the "**Holdback Amount**"). Altaba and Class Counsel agree that if the Ontario Court approves the Settlement and Altaba has paid its share of the Settlement, then Altaba will no longer need to hold back the Holdback Amount.

17.2 As soon as reasonably practicable, Class Counsel shall serve and file materials and apply to the Court for a representation order under the *Class Proceedings Act* appointing Class Counsel as representative counsel for the creditors in Canada who have claims in the proposed class actions in the Consortium Actions for the purpose of representing the putative class in the Delaware Proceedings (the "**Representation Order**"). Class Counsel will prepare the Court materials

to obtain the Representation Order. Altaba will reasonable cooperate in obtaining the Representation Order which cooperation will include preparing an affidavit in support of the Representation Order. The parties intend to have such application heard on March 2 or 3, 2020 or as soon thereafter as the Court may accommodate and counsel are available.

- 17.3 Altaba will pay Class Counsel the fixed sum of USD\$60,000 to reimburse Class Counsel's costs in the Delaware Proceedings within ten (10) Business Days of the Settlement Agreement being executed by all Parties (and at the same time the Settlement Funds are paid into the Defendants Trust Account). This amount is in addition to, and not funded by, the Settlement Fund and is in addition to the Legal Fees and Disbursements set out in this Settlement Agreement.

XVIII. MISCELLANEOUS PROVISIONS

Effect of Exhibits

- 18.1 The exhibits to this Settlement Agreement are an integral part of the Settlement and are expressly incorporated and made a part of this Settlement Agreement.

No Admission

- 18.2 This Settlement Agreement is for settlement purposes only. Neither the fact of, nor any provision contained in this Settlement Agreement, nor any action taken hereunder, shall constitute, or be construed as, any admission of the validity of any claim or any fact alleged in the Litigation or of any wrongdoing, fault, violation of law, or liability of any kind on the part of Yahoo or any admissions by Yahoo of any claim or allegation made in any action or proceeding against Yahoo. If this Settlement Agreement is terminated and becomes null and void, the class action portions of this Settlement shall have no further force and effect with respect to any party to the Litigation and shall not be offered in evidence or used in the Litigation or any other proceeding. This Settlement Agreement shall not be offered or be admissible in evidence against Yahoo or cited or referred to in any action or proceeding, except in an action or proceeding brought to enforce its terms. Information provided by Yahoo to the Plaintiffs and Class Counsel in connection with settlement negotiations is for settlement purposes only and shall

not be used or disclosed for any other purpose whatsoever.

Entire Agreement

18.3 This Settlement Agreement represents the entire agreement and understanding among the Settling Parties and supersedes all prior proposals, negotiations, agreements, and understandings relating to the subject matter of this Settlement Agreement. The Settling Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, or understanding concerning any part or all of the subject matter of this Settlement Agreement has been made or relied on except as expressly set forth in this Settlement Agreement. No modification or waiver of any provisions of this Settlement Agreement shall in any event be effective unless the same shall be in writing and signed by the person against whom enforcement of the Settlement Agreement is sought.

Counterparts

18.4 This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original as against any party who has signed it, and all of which shall be deemed a single agreement.

Arm's-Length Negotiations

18.5 The Settling Parties have negotiated all of the terms and conditions of this Settlement Agreement at arm's length. All terms, conditions, and Exhibits in their exact form are material and necessary to this Settlement Agreement and have been relied upon by the Settling Parties in entering into this Settlement Agreement. All Settling Parties have participated in the drafting of this Settlement Agreement and it is not to be construed in favor of or against any of the Settling Parties.

Continuing Jurisdiction

18.6 The Court shall retain continuing and exclusive jurisdiction over the Parties to this Settlement Agreement, including all Class Members, for the purpose of the administration, interpretation and enforcement of this Settlement Agreement.

Confidentiality

18.7 This Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with this Settlement Agreement are to be kept confidential and not disclosed until the Settlement Agreement is filed with the Court on such date as the Parties may agree upon, not to be earlier than May 2020, except for the disclosure of information which is reasonably necessary for a bona fide accounting or tax purpose, or as may be required pursuant to the order or direction of any court, tribunal, regulatory authority or governmental body, or as may be required by law.

Dispute Resolution

18.8 Any dispute between Class Counsel and the Defendants regarding the interpretation of any provision of this Settlement Agreement (other than those which the Settlement Agreement provides shall be resolved otherwise) shall be presented to a mediator to be agreed upon Class Counsel and the Defendants.

Binding Effect of Settlement Agreement

18.9 This Settlement Agreement shall be binding upon and inure to the benefit of the Settling Parties and their representatives, heirs, successors, and assigns.

Nullification

18.10 In the event any one or more of the provisions contained in this Settlement Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions if the Defendants and Class Counsel, on behalf of the Settling Parties, mutually elect to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Settlement Agreement.

Extensions of Time

18.11 The Settling Parties may agree upon a reasonable extension of time for deadlines and dates reflected in this Settlement Agreement, without further

notice (subject to Court approval as to Court dates).

Service or Notice

18.12 Whenever, under the terms of this Settlement Agreement, a person is required to provide service or written notice to the Defendants or Class Counsel, such service or notice shall be directed to the individuals and addresses specified below, unless those individuals or their successors give notice to the other Settling Parties in writing:

Authority to Execute Settlement Agreement

18.13 Each counsel or other person executing this Settlement Agreement or its exhibits on behalf of any party hereto warrants that such person has the authority to do so.

[EXECUTION PAGE FOR A SETTLEMENT AGREEMENT BETWEEN THE PARTIES]

IN WITNESS HEREOF, the Settling Parties have caused this Settlement Agreement to be executed, by their duly authorized lawyers, as of June 9, 2020.

ON BEHALF OF YAHOO! INC. (now ALTABA INC.),
YAHOO! CANADA CO. (now VERIZON MEDIA
CANADA CORP), ALTABA INC., VERIZON MEDIA,
VERIZON COMMUNICATIONS INC., OATH
HOLDINGS INC. AND OATH (CANADA) CORP (now
VERIZON MEDIA CANADA CORP).

Signature of Craig P. Dennis, Q.C.
McEwan Cooper Dennis LLP

ON BEHALF OF THE PLAINTIFFS

Theodore Charney
Charney Lawyers PC

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
JUSTICE ___)
)
) DAY OF ___, 2020

NATALIA KARASIK, RAHUL SURYAWANSHI, and ELIE CHAMI

Plaintiffs

AND:

YAHOO! INC. and YAHOO! CANADA CO.

Defendants

CV-19-00614734-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

ELIE CHAMI

Plaintiff

And

ALTABA INC., VERIZON COMMUNICATIONS INC., VERIZON MEDIA,
OATH HOLDINGS INC., and OATH (CANADA) CORP.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION made by the plaintiffs for an Order: certifying the within action as a class proceeding for settlement purposes only; approving a notice of proposed settlement to the

class; and approving the method of dissemination of the notice of proposed settlement to the class, was heard on ____, 2020, at Toronto, Ontario.

ON BEING ADVISED of the defendants' consent, and that the parties have entered into a settlement agreement, as signified by the Consolidated Settlement Agreement dated ____, subject to court approval,

AND ON READING the materials filed, including the motion record of the plaintiffs and the affidavit of ____, and on hearing the submissions of counsel for the plaintiffs and counsel for the defendants,

1. **THIS COURT ORDERS** that this Order incorporates herein, and makes a part hereof, the Consolidated Settlement Agreement attached hereto as Schedule "1" (the "Settlement Agreement"). Unless otherwise provided herein, the definitions set out in the Settlement Agreement apply to this Order.

2. **THIS COURT ORDERS** that the within action is certified as a class proceeding, on a preliminary basis, for settlement purposes only, subject to the terms of the Settlement Agreement and the conditions set out below.

Class Definition

3. **THIS COURT ORDERS** that the Settlement Class is defined as all Canadian residents with Yahoo accounts at any time during the period January 1, 2012 through December 31, 2016, inclusive (the "Settlement Class").

Representative Plaintiffs

4. **THIS COURT ORDERS** that the Natalia Karasik, Rahul Suryawanshi, and Elie Chami are appointed as the representative plaintiffs for the Settlement Class.

Settlement Class Counsel

5. **THIS COURT ORDERS** that Charney Lawyers PC is appointed as counsel to the Settlement Class (“Class Counsel”).

6. **THIS COURT ORDERS that Schedule X to the Settlement Agreement shall be sealed and kept confidential.**

Settlement Approval Hearing

7. **THIS COURT ORDERS** that it will decide:

- (a) Whether to approve the Settlement Agreement as fair, reasonable and in the best interests of the Class Members;
- (b) Whether to approve the fee request of the Class Counsel; and
- (c) Any other matters as the Court may deem appropriate

at a hearing to be held on ____, 2020, beginning at ____ AM at ____, Toronto, Ontario;

Conditions of Certification

8. **THIS COURT ORDERS** that if (i) the Settlement Agreement is terminated for any reason set out therein or (ii) any specified condition to the Settlement Agreement is not satisfied and any party seeks to terminate the Settlement Agreement:

- (e) this Order shall be set aside, be of no further force or effect, and be without prejudice to any party;

- (f) the Settlement Agreement and all proceedings in connection therewith shall be null and void, except insofar as expressly provided in the Settlement Agreement, and without prejudice to the rights of the plaintiffs and the defendants;
- (g) this class proceeding shall immediately be decertified as a class proceeding pursuant to s. 10 of the *Class Proceedings Act*, 1992 (the “CPA”) without prejudice to the plaintiffs’ ability to reapply for certification; and
- (h) each party to the within action shall be restored to his, her, or its respective position as it existed immediately prior to the execution of the Settlement Agreement.

9. **THIS COURT ORDERS** that any certification of a Settlement Class under this Order is for settlement purposes only and shall not constitute, nor be construed as, an admission on the part of any of the defendants in this action that certification of this class action is appropriate for any other purpose.

10. **THIS COURT ORDERS** that entry of this Order is without prejudice to the rights of the defendants to terminate the Settlement Agreement as provided in the Settlement Agreement.

Notice

11. **THIS COURT ORDERS** that the long form and short form notices of class action and proposed settlement substantially in the form attached hereto as Schedule “2” and “3”, respectively are hereby approved.

12. **THIS COURT ORDERS** that the Claims Administrator shall cause the short form notice to be sent in English and French via direct e-mail to all Class Members who are recorded in the defendants’ records and persons who have provided a valid email address to Class Counsel no later than 30 days after receipt of those records from the defendants’ and Class Counsel.

13. **THIS COURT ORDERS** that the Claims Administrator shall cause the short form notice to be published in an English-language newspaper (with national circulation which may or may not include Quebec) and a French-language newspaper (with Quebec circulation), to be selected by Class Counsel, as an advertisement with a maximum size of a ¼ page.

14. **THIS COURT ORDERS** that the long form notice in English and in French shall be:

- (a) posted on the settlement website to be established by the Claims Administrator;
and
- (b) posted on Class Counsel's website.

15. **THIS COURT ORDERS** that the costs of preparing, printing, publishing, mailing and otherwise disseminating the short form and long form notices shall be paid by the Claims Administrator from the Settlement Funds in accordance with section 2.4 of the Settlement Agreement.

16. **THIS COURT ORDERS** that the form and manner of notice as set out above and approved herein, are the best notice practicable under the circumstances, constitute sufficient notice to all persons entitled to notice, and satisfy the requirements of notice under s. 19 of the *Class Proceedings Act*.

The Claims Administrator

17. **THIS COURT ORDERS** that the Claims Administrator be responsible for the following: (a) disseminating notice to the Settlement Class; (b) certifying by affidavit to the Court compliance with paragraphs 12 to 15 of this Order; (c) establishing a website for purposes of posting the Notice in English and French, the Settlement Agreement and related documents; (d) creating an opt-out form (the "Opt-Out Form"); (e) accepting and maintaining documents sent from Class Members, including receiving Opt-Out Forms and other documents relating to

the settlement administration; (f) certifying by affidavit to the Court the number of requests to opt out by no later than ____; and (g) all other responsibilities designated to the Claims Administrator in the Settlement Agreement.

18. **THIS COURT ORDERS** that the costs of the Claims Administrator in completing the responsibilities as set out in paragraph 16 shall be paid to the Claims Administrator from the Settlement Funds in accordance with section 2.4 of the Settlement Agreement.

Opt-out Rights

19. **THIS COURT ORDERS** that any Class Member who wishes to be excluded from the Settlement Class shall provide a completed Opt-Out Form to the Claims Administrator in hard copy or electronic copy, to be received on or before ____, at __ a.m./p.m. EST, which date will be inserted into the notice to be disseminated prior to publication.

20. **THIS COURT ORDERS** that all requests to opt-out shall include a complete Opt-Out Form.

21. **THIS COURT ORDERS** that any person who validly opt outs of the Settlement Class shall be excluded from the Settlement Class, shall not be bound by the Settlement Agreement, shall have no rights with respect to the Settlement Agreement, and shall receive no payments as provided in the Settlement Agreement.

22. **THIS COURT ORDERS** that any Class Member that does not provide a valid completed Opt Out Form as set out in paragraphs 19 and 20 of this Order shall automatically be included in the Settlement Class.

The Honourable Justice __

Exhibit "B"

Court File No. CV-16-566248-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
JUSTICE ___)
)
) DAY OF ___, 2020

NATALIA KARASIK, RAHUL SURYAWANSHI, and ELIE CHAMI

Plaintiffs

AND:

YAHOO! INC. and YAHOO! CANADA CO.

Defendant

CV-19-00614734-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

ELIE CHAMI

Plaintiff

And

ALTABA INC., VERIZON COMMUNICATIONS INC., VERIZON MEDIA,
OATH HOLDINGS INC., and OATH (CANADA) CORP.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION made by the plaintiffs for an Order: approving the proposed settlement;

approving a notice of settlement approval to the class; approving the method of dissemination of the notice of settlement approval to the class, and approving class counsel fees and disbursements, was heard on _____, 2020 at Toronto, Ontario.

ON BEING ADVISED of the defendants' consent,

AND ON READING the materials filed, including the motion record of the plaintiffs,

AND ON HEARING the submissions of counsel for the plaintiffs and counsel for the defendants, and on reading the objections of those class member who submitted objections in writing:

1. **THIS COURT ORDERS** that this Order incorporates herein, and makes a part hereof, the Consolidated Settlement Agreement attached hereto as Schedule "1" (the "Settlement Agreement"). Unless otherwise provided herein, the definitions set out in the Settlement Agreement apply to this Order.

Settlement Approval

2. **THIS COURT ORDERS AND DECLARES** that the settlement of this class proceeding in accordance with the Settlement Agreement is fair, reasonable, and in the best interests of the Class and is hereby approved.

3. **THIS COURT ORDERS** that _____ is appointed as the Claims Administrator, with the duties and responsibilities as set out in the Settlement Agreement and in this Order.

Releases

4. **THIS COURT ORDERS AND DECLARES** that:

- a. the Plaintiffs and each Class Member release, waive and forever discharge the Released Parties from his, her, or its Released Claims;

- b. any benefits offered or obtained pursuant to the Settlement Agreement are in full, complete, and total satisfaction of all of the Released Claims against the Released Parties, the benefits are sufficient and adequate consideration for each and every term of this Release, and this Release shall be irrevocably binding upon Class Members who do not opt-out of the Settlement Class; and
- c. the Release shall be effective with respect to all Class Members, regardless of whether those Class Members ultimately file a Claim or receive compensation under the Settlement Agreement.

THIS COURT ORDERS AND DECLARES that if a Class Member does not submit a Claim on or before the deadline(s) stipulated to in the Settlement Agreement, the Class Member shall be forever barred from participating in the Settlement Fund but shall, in all other respects, be bound by terms of this Order.

Notice

- 5. **THIS COURT ORDERS** that the Notice, attached hereto as Schedule “2” is hereby approved.
- 6. **THIS COURT ORDERS AND DECLARES** that, within 45 days of the date of this Order, the Class Members be given notice of settlement approval in the following manner:
 - a. the Claims Administrator shall cause the Notice to be sent in English and French via direct e-mail to all Class Members who are recorded in the defendants’ records and persons who have provided a valid email address to Class Counsel;
 - b. the Class Administrator shall cause the Notice to be published in an English-language newspaper (with national circulation which may or may not include Quebec) and a French-language newspaper (with Quebec circulation), to be

selected by Class Counsel, as an advertisement with a maximum size of a ¼ page;
and

- c. the Claims Administrator shall cause the Notice to be
 - i. posted on the settlement website established by the Claims Administrator;
and
 - ii. posted on Class Counsel’s website.

7. **THIS COURT ORDERS** that the Notice provided for in paragraph 7 of this Order, above, satisfies the requirements of ss. 17 and 19 of the *Class Proceedings Act*, 1992 (the “CPA”).

8. **THIS COURT ORDERS** that the costs of administering the Notice shall be paid from the Settlement Funds.

Fee and Honoraria Approval

9. **THIS COURT ORDERS AND DECLARES** that the agreement as to Legal Fees and Disbursements between the representative plaintiffs and Class Counsel are fair, reasonable, and in the best interests of the Class Members, and that their terms are hereby approved.

10. **THIS COURT ORDERS AND DECLARES** that ten per cent (10%) of the Settlement Fund, net of Legal Fees and Disbursements, will be payable as a levy to the Law Foundation of Ontario.

11. **THIS COURT ORDERS AND DECLARES** that the representative plaintiffs shall each be paid an honourarium in accordance with the Settlement Agreement, fixed as follows:

- a. Natalia Karasik – CAD \$7,500;
- b. Rahul Suryawanshi – CAD \$7,500;
- c. Elie Chami – CAD \$7,500.

Other Matters

12. **THIS COURT ORDERS** that Class Counsel, the defendants and/or the Claims Administrator may make a motion to the Court for directions necessary to administer the settlement of this Action.

13. **THIS COURT ORDERS AND DECLARES** that no person may bring any action or take any proceeding against the Claims Administrator or any of its employees, agents, partners, associates, representatives, in respect of the implementation of this Order or the administration of the Settlement Agreement, except with leave of this Court.

14. **THIS COURT ORDERS** that any information received by the Claims Administrator in connection with the Settlement Agreement that pertains to a particular Class Member shall be confidential and shall not be disclosed by the Claims Administrator to any other Class Member.

15. **THIS COURT ORDERS AND DECLARES** that, save as aforesaid, this Action be and is hereby dismissed, with prejudice and without further costs.

The Honourable Justice ____

Schedule "X"

Court File No. CV-16-566248-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**NATALIA KARASIK, RAHUL SURYAWANSHI,
DAVID BRUNI, and ELIE CHAMI**

PLAINTIFFS

AND:

YAHOO! INC., and YAHOO! CANADA CO.

DEFENDANTS

1.

[REDACTED]

Schedule "2"

NOTICE OF YAHOO DATA BREACH CLASS ACTION AND PROPOSED SETTLEMENT

PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS.

WHAT IS THIS NOTICE ABOUT?

This notice is directed to all Canadian residents with Yahoo accounts at any time during the period January 1, 2012 through December 31, 2016, inclusive (the "**Class**" or "**Class Members**").

This notice concerns the proposed settlement of a class action lawsuit against Yahoo! Inc. and Yahoo! Canada Co. (the "**Settlement**"). The lawsuit alleges that Yahoo experienced multiple data breaches between 2013 and 2016 (the "**Data Breaches**") because it had inadequate data security measures in place to protect account holders' personal information. The defendants Yahoo! Inc. and Yahoo! Canada Co. (collectively, "**Yahoo**" or the "**Defendants**") deny that they have violated any laws and deny that they have engaged in any wrongdoing.

THE PROPOSED SETTLEMENT

The parties have entered into a settlement agreement (the "**Settlement Agreement**"). In order for the Settlement to become effective, it must be approved by the Ontario Superior Court of Justice (the "**Court**"). If the Court approves the Settlement Agreement, the Defendants will pay \$20,325,683.58 (the "**Settlement Fund**") to settle the claims of the Class Members, including the Legal Fees and Disbursements and the Administrative Expenses for the Settlement Administration, in return for a release and a dismissal of the class action. If you would like a copy of the Settlement Agreement, it is available at www.yahooprivacybreach.com and [insert claims administrator's website], or a copy can be obtained by contacting Class Counsel as listed below.

The Settlement is conditional on the events described at paragraphs 14.1(a)-(c) of the Settlement Agreement. The Defendants do not admit wrongdoing or liability. This Settlement is a compromise of disputed claims.

COMPENSATION FOR CLASS MEMBERS

Class Members shall submit Claim Forms to the Claims Administrator, who will determine the amounts to be distributed to Class Members from the Settlement Fund, in full and final settlement of their claims. The amount remaining from the Settlement Fund, after deductions for legal fees, disbursements, and taxes thereon and administrative expenses for the settlement administration, honorariums for named Plaintiffs and a 10% levy to the Law Foundation of Ontario (the "**Net Settlement Fund**"), shall be distributed as follows:

- (a) Up to \$4 million to pay "**Category A**" claims for:
- i. Cash Reimbursement for documented out-of-pocket costs or expenditures, as defined in the Settlement Agreement, that a Class Member actually incurred due to one or more of the Data Breaches, and time spent performing tasks traceable to mitigating the impact of the Data Breaches at \$25.00 per hour, to a maximum of fifteen hours.
 - ii. Cash Reimbursement for up to 25% of the cost of service paid for between August 1, 2013 and December 31, 2016 for Class Members that paid Yahoo for advertisement-free or premium email services.
 - iii. Cash Reimbursement for up to 25% of the cost of services paid for between August 1, 2013 and December 31, 2016 for Class Members that paid for Yahoo or Aabaco Small Business services.

The maximum a Class Member can claim for Category A Claims is \$25,000.

- (b) The balance of the Net Settlement Fund to pay claims for Class Members who do not claim under Category A, including wasted time and inconvenience responding to one or more of the Data Breaches, in the amount of \$25 per hour for each hour spent responding to one or more of the Data Breaches, not to exceed \$125 for each Data Breach where the Class Member received a Notice of the Data Breach (“**Category B Claims**” or “**Alternative Compensation**”); and
- (c) Class Members who qualify for Category B Claims may elect to waive that compensation in favour of credit monitoring services of at least one year (“**Category C Claims**” or “**Credit Monitoring Services**”).

You cannot make a Claim until after the Settlement is approved. If the Settlement is approved, further notice of the Settlement will NOT be given. You should monitor the Settlement Website and check it regularly at www.yahooprivacybreach.com for the latest information on the status of the Settlement and the details and deadline for making a Claim.

OPTING OUT

If you fall within the Class definition, you are automatically included in the Class, and you will be bound by the Settlement if it is approved by the Court, unless you choose to exclude yourself by opting out. If you opt out, you will not be a Class Member, and you will not be eligible to participate in any settlement approved by the court, but you will retain any rights you may currently have to sue the defendants over the legal issues in the lawsuit.

If you do not want to be part of the class action lawsuit, you must fully complete and send a copy of the Opt-Out Form to [NTD: insert email address], the Claims Administrator appointed by the Court to receive the forms and collect the opt-out information, by [NTD: insert deadline]. A copy of the Opt-Out Form can be found at www.yahooprivacybreach.com and [insert claims administrator’s website],

SETTLEMENT APPROVAL HEARING

The Ontario Superior Court of Justice will hold a virtual settlement approval hearing at the courthouse at Osgoode Hall, 130 Queen Street West, Toronto, Ontario on [NTD: insert date and time] to consider whether the proposed settlement is fair, reasonable and in the best interests of the Class (the “**Approval Hearing**”). Class Members and members of the public may attend the virtual Approval Hearing but are not required to do so. The details on how to attend remotely will be posted to www.yahooprivacybreach.com.

As a Class Member, you are entitled, but not obligated, to express your opinions about the proposed settlement and whether it should be approved. If you wish to make a submission to the Court supporting or objecting to the proposed settlement, you must send your submissions in writing by email to the Claims Administrator, at [NTD: insert email address], and ensure they are received no later than [NTD: insert deadline]. The Claims Administrator will provide all submissions to the Court and the Defendants in advance of the Approval Hearing. Your written submissions should include:

- your name, address and telephone number;
- a brief statement of the reasons that you support or oppose the proposed settlement terms; and
- whether you plan to attend at the Approval Hearing

ADMINISTRATION COSTS AND LEGAL FEES

The Plaintiffs entered into contingency fee agreements with Class Counsel, providing that Class Counsel are to be paid only in the event of a successful settlement or judgment. Class Counsel will be asking that the Court approve legal fees of 24% of the Settlement Fund, plus disbursements and applicable taxes, in accordance with the contingency fee agreements. Class Counsel will also be asking that the Court approve an honorarium of \$7,500 to be awarded to each of the three Plaintiffs in recognition of their role in this litigation (the “**Honorariums**”). The Law Foundation of Ontario is also entitled to 10% of the benefits payable to Class Members, net of Class Counsel’s legal fees, disbursements and applicable taxes (the “**Levy**”).

FOR FURTHER INFORMATION

For questions regarding this Notice or the proposed settlement, please contact Class Counsel as follows:

Kiara Sancler and Cisy Mahendralingam

Charney Lawyers PC

151 Bloor St. W., Suite 602

Toronto, ON M5S 1S4

Tel: (416) 964-7950

Email: info@charneylawyers.com

Please do not call the defendants or the courts about this action.

INTERPRETATION

This Notice has been approved by the Court and contains a summary of some of the terms of the proposed settlement. If there is a conflict between the provisions of this Notice and the Settlement Agreement, the Settlement Agreement shall prevail.

THIS NOTICE HAS BEEN AUTHORIZED BY THE ONTARIO SUPERIOR COURT OF JUSTICE.

Schedule "3"

NOTICE OF YAHOO DATA BREACH CLASS ACTION AND PROPOSED SETTLEMENT

PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS.

A Class Action Settlement has been proposed in the litigation against Yahoo! Inc. ("Yahoo") and Yahoo! Canada Co. (together, called "**Defendants**" in this notice), relating to data breaches occurring in 2013 through 2016 (the "**Data Breaches**"). The parties have entered into a settlement agreement (the "**Settlement Agreement**"). The Settlement is conditional on the events described at paragraphs 14.1(a)-(c) of the Settlement Agreement. The Defendants do not admit any wrongdoing or liability. The proposed Settlement will not become final unless and until it is approved by the Ontario Superior Court of Justice (the "**Court**") following a settlement approval hearing to be held virtually on [NTD: insert date and time] at the courthouse at Osgoode Hall, 130 Queen Street West, Toronto, Ontario. You may attend the virtual settlement approval hearing but are not required to do so. Please check www.yahoodatabreach.com for additional information, including how to attend the virtual settlement approval hearing.

If you are a Canadian resident with a Yahoo account at any time during the period January 1, 2012 through December 31, 2016, inclusive, you are a "**Class Member**".

You must now decide whether you want to be part of the proposed Settlement or whether you would like to exclude yourself by "opting out" of the proposed Settlement and preserve your right to sue the Defendants for claims related to the Data Breaches. If you decide to be part of the proposed Settlement, and if the Court approves the proposed Settlement, you will be entitled to the benefits described below. However, you will give up any right you may have, now or in the future, to sue the Defendants for claims related to the Data Breaches. If you decide to exclude yourself by "opting out" of the Settlement, you will not be entitled to the benefits of the Settlement, but you will retain your right to sue the Defendants individually for claims related to the Data Breaches. Please read this Notice carefully before you make your decision. If you have any questions, please contact Class Counsel, identified below, or visit www.yahoodatabreach.com.

SUMMARY OF SETTLEMENT BENEFITS

If the Court approves the Settlement Agreement, the Defendants will pay \$20,325,683.58 (the "**Settlement Fund**") to settle the claims of the Class Members, including the Legal Fees and Disbursements and the Administrative Expenses for the Settlement Administration, in return for a release and a dismissal of the class action.

Class Members shall submit Claim Forms to the Claims Administrator, who will determine the amounts to be distributed to Class Members from the Settlement Fund, in full and final settlement of their claims. The amount remaining from the Settlement Fund, after deductions for legal fees, disbursements, and taxes thereon and administrative expenses for the settlement administration, honorariums for named Plaintiffs and a 10% levy to the Law Foundation of Ontario (the "**Net Settlement Fund**"), shall be distributed as follows:

- (a) Up to \$4 million to pay "**Category A**" claims for:
- i. Cash Reimbursement for documented out-of-pocket costs or expenditures, as defined in the Settlement Agreement, that a Class Member actually incurred due to one or more of the Data Breaches, and time spent performing tasks traceable to mitigating the impact of the Data Breaches at \$25.00 per hour, to a maximum of fifteen hours.
 - ii. Cash Reimbursement for up to 25% of the cost of service paid for between August 1, 2013 and December 31, 2016 for Class Members that paid Yahoo for advertisement-free or premium email services.
 - iii. Cash Reimbursement for up to 25% of the cost of services paid for between August 1, 2013 and December 31, 2016 for Class Members that paid for Yahoo or Aabaco Small Business services.

The maximum a Class Member can claim for Category A Claims is \$25,000.

- (b) The balance of the Net Settlement Fund to pay claims for Class Members who do not claim under Category A, including wasted time and inconvenience responding to one or more of the Data Breaches, in the amount of \$25 per hour for each hour spent responding to one or more of the Data Breaches, not to exceed \$125 for each Data Breach where the Class Member received a Notice of the Data Breach (“**Category B Claims**” or “**Alternative Compensation**”); and
- (c) Class Members who qualify for Category B Claims may elect to waive that compensation in favour of credit monitoring services of at least one year (“**Category C Claims**” or “**Credit Monitoring Services**”).

If the Settlement is approved, further notice of the Settlement will NOT be given. You should monitor the Settlement Website and check it regularly at www.yahooprivacybreach.com for the latest information on the status of the Settlement and the details and deadline for making a Claim.

Other limitations and qualifications may apply. Please consult the “Understanding the Settlement” section below, a lawyer, or contact Class Counsel if you have questions.

WHAT MUST YOU DO NOW

You must decide now if you want to be part of the proposed Class, so that if the Court approves the Settlement you can take advantage of the benefits described above, or whether you want to exclude yourself by “opting out” from the Class and retain your right to sue the Defendants for claims related to the Data Breaches. If you do not exclude yourself by “opting out”, you can file objections to the proposed Settlement. Your options, and how to exercise them, are described below.

YOUR OPTIONS IN THIS SETTLEMENT AND HOW TO EXERCISE THEM		
I want to be part of the proposed Settlement	You do not need to do anything. If the Court approves the Settlement, you will be able to claim your benefits by following the procedures described below. However, you will give up your individual right to sue the Defendants for claims related to the Data Breaches.	No deadline
I want to exclude myself from this Settlement	If you do not want to be part of this Settlement, you may exclude yourself or “optout” of the proposed Class by submitting a request to do so in writing by completing the Opt-Out Form, which is available at www.yahoodatabreach.com . You must send a copy of the completed Opt-Out Form to [NTD: insert email address]. Your request must be sent via email no later than the date indicated. If you choose to exclude yourself, you will not be entitled to any of the Settlement benefits, but you will keep your individual right to sue the Defendants for claims related to the Data Breaches. See Question 10 below for additional details regarding the Opt-Out Process.	Deadline: [NTD: insert deadline]
I want to object or comment on the Settlement	If you elect to be part of the Class, you may object to it by writing to the Court explaining why you object. The process you must follow for filing and serving objections is described below in the “Understanding the Settlement” section. You may also ask to speak in Court at the settlement approval hearing about the proposed Settlement if you file a timely objection and submit a timely notice of your intent to appear at the settlement approval hearing. Instructions are below in the “Understanding the Settlement” section.	Deadline: [NTD: insert deadline]

UNDERSTANDING THE SETTLEMENT

I. Basic Questions

1. Why am I getting this Notice?

The Court in charge of this litigation authorized this Notice because you may be a member of the Class. The Notice explains the proposed Settlement and helps you understand all of your options before the Court decides whether or not to approve the Settlement.

Your receipt of Settlement benefits, including cash payments, depends on the Court's final approval of the Settlement and the resolution of any appeals in favor of approval of the Settlement.

Please be patient and check the Settlement Website at www.yahoodatabreach.com regularly. Do not contact the Defendants regarding the details of this Settlement because they will not have any information that is not on the Settlement Website. Do not contact the courts about this action.

2. What is this lawsuit about?

This Settlement resolves litigation against the Defendants alleging that the Defendants experienced multiple data breaches between 2013 and 2016 because they had inadequate data security measures in place to protect account holders' personal information. The Plaintiffs claim that they were injured as a result.

You can read the Amended Fresh as Amended Statement of Claim by visiting www.yahoodatabreach.com. The Defendants deny that it has violated any law or engaged in any wrongdoing. The parties agreed to resolve these matters before these issues were decided by the Court.

3. Why is there a Settlement?

A settlement is an agreement between a plaintiff (or multiple plaintiffs) and a defendant (or multiple defendants) to resolve a lawsuit. Settlements end all or part of a lawsuit without a trial and without the court or a jury ruling in favor of either side. All parties in the lawsuit agree to a settlement to avoid the cost and risk of further litigation, including a potential trial, and to afford Class Members benefits in exchange for releasing the defendant from liability. This proposed Settlement does not necessarily mean that the Defendants broke any laws or did anything wrong, and the Court did not decide which side was right.

This Notice summarizes the Settlement's key terms, including benefits to Class Members, and the rights and obligations of all parties. If there is any conflict between this Notice and the Settlement Agreement, which is also accessible on the Settlement Website, the Settlement Agreement governs. Terms that are defined in the Settlement Agreement have the same meaning in this Notice.

4. How was this Settlement reached?

The Plaintiffs and the Defendants reached this Settlement after two day-long mediations, in which Mr. Jed Melnick of JAMS Mediation, Arbitration, ADR Services and subsequently the Honourable Frank Newbould, Q.C., participated as mediators. During these sessions, the Plaintiffs' counsel and the Defendants' counsel engaged in extensive arm's-length negotiations. An agreement was reached thereafter. Both sides then negotiated the final terms of the Settlement Agreement, which will be submitted to the Court for approval.

5. What options do I have now?

You may exclude yourself by "opting out" from this Settlement, you may write to object to the Settlement, or you may do nothing.

Please consult the chart on **page 2** on how to exercise each option, as well as the time by which you must do so.

6. Why is this a class action?

A class action is a representative action or lawsuit in which one or more plaintiffs (also called "representative plaintiffs") sue a defendant(s) on behalf of other, unnamed people with similar claims. All of these people together are the "Class" or "Class Members," if the Court approves this procedural form. Once approved, the Court resolves the issues for all Class Members, except for those who opt out of the Class. To opt out means that you choose to exclude yourself from the Class. If you opt out, you will be denied any benefits under the Settlement. The opt-out process is described in **Question 10** of this Notice.

7. What am I giving up in exchange for receiving the Settlement's benefits?

If the Settlement becomes final and you have not opted out, you will be eligible for the benefits described in this Notice. In exchange for having those benefits available to you, you will give up your right to sue the Defendants for claims related to the Data Breaches.

II. Who is in the Settlement?

8. How do I know if I am part of the Settlement?

You are a Class Member if you are a Canadian resident with a Yahoo account at any time during the period January 1, 2012 through December 31, 2016, inclusive.

III. Understanding the Class Action Process

9. When will the Settlement get finally approved?

The Court has set a date of [NTD: insert date and time] for the virtual Settlement Approval Hearing. The virtual hearing will take place at Osgoode Hall, 130 Queen Street West, Toronto, Ontario. At the virtual hearing, the Court will consider arguments and evidence as to whether the Settlement is fair, reasonable, and in the best interest of the Class Members and whether class counsel's fees, disbursements and taxes should be approved and whether the plaintiffs' honoraria should be approved. We anticipate that the Court will decide whether to approve the Settlement soon after the hearing. You should monitor the Settlement website for the latest information on the status of the settlement.

10. What if I do not want to participate in the settlement?

If you do not want to receive benefits from the Settlement and want to retain your right to sue the Defendants for claims related to the Data Breaches, then you must actively remove yourself from the Class. You may do this by asking in writing to be excluded from, or opt out of, the Settlement. You must complete the Opt-Out Form available at www.yahoodatabreach.com and send it back to the Claims Administrator.

You must send your completed Opt-Out Form via email to [NTD: insert email address] no later than [NTD: insert deadline].

11. If I am part of the Settlement, can I sue the Defendants for the same claims later?

No. Unless you exclude yourself, you give up the right to sue the Defendants for the claims that this Settlement resolves.

12. If I am not part of the Settlement, can I still get the benefits from the Settlement?

No. If you elect to exclude yourself, you will not be entitled to any benefits from the Settlement.

13. If I opt out and pursue my own case, can I get a larger recovery?

The laws of most provinces provide for various remedies, including actual damages, punitive damages, and rescission, if a claim is proved at trial and upheld on appeal. No result can be predicted with certainty, and all alternative legal actions take additional time and may be subject to offsets or deductions for lawyers' fees and costs. This Settlement is designed to provide benefits that are certain, not subject to the delay and risk of trial and appeal, and not reduced by fees or costs.

14. Do I have a lawyer in this case?

Yes. The Court appointed as Class Counsel Charney Lawyers PC to represent you and the other Class Members.

Charney Lawyers PC

150 Bloor Street West, Suite 602
Toronto, ON M5S 1S4
Phone: (416) 964-7950
e-mail: info@charneylawyers.com

If you want to be represented by your own lawyer, you may hire one at your expense.

15. Who will pay the lawyers?

Class Counsel will be asking that the Court approve legal fees of 24% of is \$20,325,683.58, plus disbursements and applicable taxes, in accordance with the contingency fee agreements.

Class Counsel will also be asking that the Court approve an honorarium of \$7,500 to be awarded to each of the three Named Plaintiffs in recognition of the role they played as representative plaintiffs in this litigation.

10% of the benefits payable to Class Members will be paid to the Law Foundation of Ontario.

16. Can I tell the Court if I object to the settlement?

If you do not opt out of the Settlement, you (or your lawyer) may object in writing to the Court. The Court will consider your views. If you wish to make a submission to the Court commenting on or objecting to the proposed settlement, you must send your submissions in writing by email to the Claim Administrator at [NTD: insert email address], and ensure they are received no later than [NTD: insert deadline]. The Claims Administrator will provide all submissions to the Court and the Defendants in advance of the Approval Hearing. Your written submissions should include:

- your name, address, and telephone number;
- a brief statement of the reasons that you support or oppose the proposed settlement terms; and
- whether you plan to attend the settlement approval hearing

17. What is the difference between objecting to the Settlement and opting out?

You can object only if you participate in the Class. If you opt out and therefore elect not to be part of the Settlement, you have no right to object to the Settlement because the case no longer affects you.

18. Do I have to attend the Settlement Approval Hearing?

No. Class Counsel will answer any questions the Court may have. You are welcome to attend at your own expense. If you timely file an objection, you do not have to come to Court to talk about it. As long as you submitted your written objection on time, the Court will consider it. You may also have your own lawyer attend at your expense, but it is not required

19. How do I get more information?

This Long Form Class Notice summarizes the proposed Settlement. More details, including the actual Settlement Agreement, are available at www.yahoodatabreach.com.

You may also contact Class Counsel at:

Kiara Sancler and Cisy Mahendralingam
Charney Lawyers PC
150 Bloor Street West, Suite 602
Toronto, ON M5S 1S4
Phone: (416) 964-7950
e-mail: info@charneylawyers.com

You may also contact the Claims Administrator.

IV. Details of Settlement Benefits

20. What benefits does the Settlement Provide?

The Settlement provides the following benefits to Class Members:

- A. **Category A Claims:** up to \$4 million to pay claims for:
- Cash Reimbursement for Out-of-Pocket Losses;
 - Cash Reimbursement for up to 25% of Paid User Costs; and
 - Cash Reimbursement for up to 25% of Small Business User Costs;
- B. **Category B Claims:** Cash Payment, as an Alternative to Category A Claims; or
- C. **Category C Claims:** Credit Monitoring Services of at least one year, as an Alternative to Category B Claims.

21. How do I submit a Category A Claim for Reimbursement of Out-of-Pocket Costs, Paid User Costs or Small Business User Costs?

Out of Pocket Costs

You may request payment of Out-of-Pocket Costs by submitting an Out-of-Pocket Costs Claim Form (either in paper form or on the Settlement Website) to the Claims Administrator accompanied by a declaration for the Out-of-Pocket Costs incurred, and documentation of Out-of-Pocket Costs, as detailed on the Out-of-Pocket Costs Claim Form.

The Claims Administrator will verify that each person who submits an Out-of-Pocket Costs Claim Form is a Class Member. The Claims Administrator will have the sole discretion and authority to determine whether and to what extent an Out-of-Pocket Costs Claim Form reflects valid Out-of-Pocket Costs. To the extent the Claims Administrator determines a claim for Out-of-Pocket Costs is deficient, the Claims Administrator will, within 15 days of making the determination, notify the Class Member of the deficiencies and give the Class Member 30 days to cure the deficiencies. The Claims Administrator will have the sole discretion and authority to determine whether the Class Member has cured the deficient claim such that it reflects valid Out-of-Pocket Costs.

Out-of-Pocket Costs for preventative measures, such as obtaining credit monitoring services, insurance or credit freezes, will be considered to be due to one or more of the Data Breaches if the Class Member states that they believe the costs were incurred as a result of one or more of the Data Breaches. Out-of-Pocket Costs for unreimbursed losses related to identity theft, falsified tax returns, or other alleged wrongdoing (collectively "Misconduct"), or for attempting to remedy Misconduct, shall be considered to be due to one or more of the Data Breaches if: (i) the Misconduct occurred within four months of Notice of one or more of the Data Breaches; (ii) the Class Member states that he, she, or it believes the Misconduct is connected to one or more of the Data Breaches; and (iii) the Misconduct involved possible misuse of the type of personal information accessed in one or more of the Data Breaches (i.e., names, email addresses, telephone numbers, birth dates, passwords, and security questions of Yahoo account holders, or from contents of the Class Member's email account, such as financial communications and records containing credit cards, retail accounts, banking, account passwords, tax documents, and social insurance numbers from transactions conducted by email).

Paid User Costs

All Paid Users will be eligible to receive an amount of up to 25% of the cost of services paid for between August 1, 2013 and December 31, 2016, upon submission of a valid Paid User Claim (as determined by the Claims Administrator).

The Claims Administrator will verify that each person who submits a Paid User Claim Form is a Class Member and a Paid User. The Claims Administrator will have the sole discretion and authority to determine whether and to what extent a Paid User Claim Form reflects valid Paid User services. To the extent the Claims Administrator determines a claim for Paid User services is deficient, the Claims Administrator will, within 15 days of making the determination, notify the Class Member of the deficiencies and give the Class Member 30 days to cure the deficiencies. The Claims Administrator will have the sole discretion and authority to determine whether the Class Member has cured the deficient claim such that it reflects valid Paid User services.

Small Business User Costs

All Small Business Users will be eligible to receive an amount of up to 25% of the cost of services paid for between August 1, 2013 and December 31, 2016, upon submission of a valid Small Business User Claim (as determined by the Claims Administrator).

The Claims Administrator will verify that each person who submits a Small Business User Claim Form is a Class Member and a Small Business User. The Claims Administrator will have the sole discretion and authority to determine whether and to what extent a Small Business User Claim Form reflects valid Small Business User services. To the extent the Claims Administrator determines a claim for Small Business User services is deficient, the Claims Administrator will, within 15 days of making the determination, notify the Class Member of the deficiencies and give the Class Member 30 days to cure the deficiencies. The Claims Administrator will have the sole discretion and authority to determine whether the Class Member has cured the deficient claim such that it reflects valid Small Business User services.

22. What benefits will I receive if I submit a Category A Claim Form for valid Out-of-Pocket Costs, Paid User services and Small Business services?

Each Class Member who submits a Claim Form for valid Out-of-Pocket Costs, Paid User services and Small Business services (as determined by the Claims Administrator) will be eligible to receive a payment equal to the lesser of: (1) the amount of the Class Member's valid Out-of-Pocket Costs and recoverable Paid User services and Small Business services, or (ii) \$25,000; provided, however, that the payment may be reduced as provided in section 6.1 of the Settlement Agreement.

23. What happens if the total of the Category A Claims exceeds \$4 million?

If the total of the Category A Claims exceeds \$4 million, any excess funds after Category B Claims have been paid will go to fund Category A Claims. If there remains a shortfall in funds in respect of Category A Claims, then the available funds will be distributed to Category A Claims on a *pro rata* basis.

24. What happens if the total of the Category A Claims is less than \$4 million?

If the total of the Category A Claims is less than \$4 million, the available funds will be distributed to top up any shortfall in funds in respect of Category B Claims, or, if there is no shortfall in Category B Claims, to fund Credit Services, if those services are available.

25. How do I submit a Category B Claim for Alternative Compensation?

Class Members who do not request payment of their Out-of-Pocket Costs, and recoverable Paid User services and Small Business services may request compensation for wasted time and inconvenience responding to one or more of the Data Breaches by submitting an Alternative Compensation Claim Form (either in paper form or on the Settlement Website) to the Claims Administrator accompanied by a declaration in respect of the time spent responding to one or more of the Data Breaches as detailed on the Alternative Compensation Claim Form.

The Claims Administrator will verify that each person who submits an Alternative Compensation Claim Form is a Class Member. The Claims Administrator will have the sole discretion and authority to determine whether and to what extent an Alternative Compensation Claim Form reflects wasted time and expense responding to one or more of the Data Breaches. To the extent the Claims Administrator determines a claim for Alternative Compensation is deficient, within 15 days of making the determination, the Claims Administrator will notify the Class Member of the deficiencies and give the Class Member 30 days to cure the deficiencies. The Claims Administrator will have the sole discretion and authority to determine whether the Class Member has cured the deficient claim such that it reflects valid losses actually incurred.

26. What benefits will I receive if I submit a Category B Claim for Alternative Compensation?

Alternative Compensation Claims will be eligible to receive \$25 per hour for each hour spent responding to the one or more of the Data Breaches, not to exceed \$125 for each Data Breach where the Class Member received a Notice of the Data Breach upon submission of a valid Alternative Compensation Claim Form (as determined by the Claims Administrator).

Administrator); provided, however, that the payment may be reduced as provided in section 6.2 of the Settlement Agreement.

27. What happens if the total of the Category B Claims exceeds the portion of the Net Settlement Fund allocated to Category B Claims?

If the total of Category B Claims, excluding those who elect Credit Services (i.e. Category C Claims) exceeds the portion of the Net Settlement Fund allocated to Category B Claims, then Category C Claims will be treated as Category B Claims and the available funds will be distributed to Category B Claims on a *pro rata* basis.

28. What happens if the total of the Category B Claims is less than the portion of the Net Settlement Fund allocated to Category B Claims?

If the total of Category B Claims, excluding those who elect Credit Services (i.e. Category C Claims) is less than the portion of the Net Settlement Fund allocated to Category B Claims, any excess funds will pay for Credit Services. In the event these excess funds are sufficient to purchase Credit Services then Class Counsel will make reasonable efforts to purchase the best product available with the funds available, with a goal of two years of Credit Services. If the surplus is insufficient to purchase Credit Services for Class Members who elect Credit Services, all Category C Claims will be treated as Category B Claims and paid accordingly and Credit Services will not be purchased.

29. How do I submit a Category C Claim for Credit Monitoring Services?

Class Members who submit an Alternative Compensation Claim Form and who qualify for Alternative Compensation may elect to waive that compensation in favour of Credit Services, should there be a sufficient residue in the balance of the Net Settlement Fund to fund Credit Services. Credit Services for a term of up to two years have an estimated retail value of \$478.80 per Class Member.

Class Members who make this election must request Credit Monitoring Services by indicating this election on, and submitting, an Alternative Compensation Claim Form (either in paper form or on the Settlement Website) to the Claims Administrator as detailed on the Alternative Compensation Claim Form.

The Claims Administrator will verify that each person who submits an Alternative Compensation Claim Form electing Credit Services: (i) is a Class Member; and (ii) otherwise qualifies for Alternative Compensation. Ambiguities or deficiencies on the face of the Alternative Compensation Claim Form shall be resolved by the Claims Administrator. To the extent there is any ambiguity with respect to a Class Member's election for Credit Services, and the Claims Administrator cannot resolve the ambiguity, the ambiguous Claim Form shall default to a claim for Alternative Compensation. However, for either ambiguities or deficiencies, the Claims Administrator will first ask the Class Member to cure the ambiguity or deficiency, and in doing so, may use its discretion to determine the most efficient and effective means of communicating with the Class Member, whether by email, telephone, or mail. Disputes with respect to any Claim Form will be resolved by the Claims Administrator.

30. What benefits will I receive if I submit a Category C Claim for Credit Monitoring Services?

If the total of Category B Claims, excluding those who elect Credit Services (i.e. Category C Claims) is less than the portion of the Net Settlement Fund allocated to Category B Claims, any excess funds will pay for Credit Services. In the event these excess funds are sufficient to purchase Credit Services then Class Counsel will make reasonable efforts to purchase the best product available with the funds available, with a goal of two years of Credit Services. If the surplus is insufficient to purchase Credit Services for Class Members who elect Credit Services, all Category C Claims will be treated as Category B Claims and paid accordingly and Credit Services will not be purchased.

31. What happens if some of the money from this Settlement is not claimed?

Any money left in the Net Settlement Fund after these expenditures (i.e., the residue) will be allocated equally to all Class Members whose Claims were at least partially approved excluding Claims submitted solely in respect of Paid User services and Business User services.

32. When and how will I receive the benefits I claim from the Settlement?

Payments for valid claims, and credit monitoring services, will be made after the Settlement becomes final. This process may take longer than one year. Please be patient.

Checks for valid Out-of-Pocket Costs, Paid User Costs, Small Business User Costs and Alternative Compensation will be mailed by the Claims Administrator to the mailing address that you provide, or deposited by direct deposit to the bank account information that you provide on your claim form(s).

If you make a valid claim for credit monitoring Services, the Claims Administrator will send you information on how to activate your credit monitoring.

33. What happens if my contact information changes after I submit a Claim?

If, after you submit a claim form, you change your mailing address, email address, or banking information (if applicable), it is your responsibility to inform the Claims Administrator of your updated information. You may do so by contacting the Claims Administrator at [NTD: insert contact information.]

CLAIMING YOUR BENEFITS

Claims for benefits cannot be submitted until on or after the date on which the Court issues the Approval Order (the “**Approval Date**”). However, no claims will be processed, and no benefits will be paid or available, until the first Business Day after the conditions in section 15.1 of the Settlement Agreement have been satisfied, or where provided for, waived by the Defendants (the “**Effective Date**”).

Once they are known, the Approval Date and the Effective Date of the Settlement will be posted on www.yahooprivacybreach.com or can be obtained by calling [NTD: insert phone number].

PROCEDURE		
I want to submit a Category A Claim for Out-of-Pocket Costs	You must make a claim in order to receive reimbursement for Out-of-Pocket Costs. For detailed information about how to submit a Claim for Out-of-Pocket Costs, see Question 21 .	Deadline: [NTD: insert deadline]
I want to submit a Category A Claim for Paid User Costs	If you paid Yahoo for premium or advertisement-free email services, you must make a claim in order to receive reimbursement for a portion of those costs. For detailed information about how to submit a Claim for Paid User Costs, see Question 21 .	Deadline: [NTD: insert deadline]
I want to submit a Category A Claim for Small Business Users Costs	If you paid Yahoo or Aabaco for small business services, you must make a claim in order to receive reimbursement for a portion of those costs. For detailed information about how to submit a Claim for Paid User Costs, see Question 21 .	Deadline: [NTD: insert deadline]
I want to submit a Category B Claim for Alternative Compensation	You must make a claim in order to receive Alternative Compensation. For detailed information about how to submit a Claim for Alternative Compensation, see Question 25 .	Deadline: [NTD: insert deadline]
I want to submit a Category C Claim for Credit Monitoring Services	You must make a claim in order to receive Credit Monitoring Services. For detailed information about how to submit a Claim for Credit Monitoring Services, see Question 29 .	Deadline: [NTD: insert deadline]

TIMELINE FOR RECEIVING BENEFITS

Please be advised that while you may submit Claims on or after the Approval Date, your claim will not be processed until the Effective Date. The Effective Date could be months, or even years, after the Approval Date.

Please check the Settlement Website regularly at www.yahooprivacybreach.com for updates and news about when your Claims can be filed and processed.

CONTACT INFORMATION

For copies of Settlement documents or further information on how to submit Claims for cash payments to the Claims Administrator, please visit [NTD: insert website] or call [NTD: insert phone number].

For all other questions please contact Class Counsel:

Kiara Sancler and Cisy Mahendralingam

Charney Lawyers PC

151 Bloor St. W., Suite 602

Toronto, ON M5S 1S4

Tel: (416) 964-7950

Email: info@charneylawyers.com

Please do not call the defendants or the courts about this action.

INTERPRETATION

This Notice has been approved by the Court and contains a summary of some of the terms of the proposed settlement. If there is a conflict between the provisions of this Notice and the Settlement Agreement, the Settlement Agreement shall prevail.

THIS NOTICE HAS BEEN AUTHORIZED BY THE ONTARIO SUPERIOR COURT OF JUSTICE.

Schedule "4"

YAHOO DATA BREACH CLASS ACTION OPT-OUT FORM

If you do not complete this opt-out form, you are automatically a class member and eligible to make a claim for compensation if the proposed settlement is approved by the Court.

If you complete and submit this form, you will be permanently excluded from the Yahoo class action, including the proposed settlement of this action. To the extent class members are entitled to recover money in the settlement, you will be excluded by opting out of the class action.

By opting out, you are confirming that you do not wish to be a class member and that you do not want to participate in the settlement.

DO NOT SUBMIT THIS FORM IF YOU WANT TO REMAIN IN THE CLASS ACTION.

This form must be **fully** completed and received no later than 90 days from the Notice Date. Opt-out forms received after 90 days from the Notice Date will not be valid.

For more information on the Yahoo class action, please see the Notice of Yahoo Data Breach Class Action and Proposed Settlement enclosed with this opt-out form, visit www.yahooprivacybreach.com, or contact Class Counsel as follows:

Kiara Sancler and Cisy Mahendralingam

Charney Lawyers P.C.
151 Bloor St. W., Suite 602
Toronto, ON M5S 1S4
Tel: (416) 964-7950
Email: info@charneylawyers.com

CLASS MEMBER INFORMATION

LAST NAME:		FIRST NAME:	
MAILING ADDRESS:			
CITY:		PROVINCE/STATE:	POSTAL/ZIP:
PHONE NUMBER:	EMAIL ADDRESS:		

DECLARATION

I declare that I wish to opt out of the Yahoo class action.

I declare that I have read the foregoing and understand that, by opting out of the Yahoo class action, I will no longer be a class member and will never be eligible to receive compensation from any settlement or judgment awarded by the court in this class action.

DATE:	SIGNATURE:
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EXPLANATION OF WHY YOU ARE OPTING OUT

In order to fully complete this form, you must provide an explanation for why you are opting out.

EXPLANATION:

Return completed opt-out forms to:

[INSERT CLAIMS ADMIN EMAIL ADDRESS]

CITATION: Karasik v. Yahoo! Inc., 2020 ONSC 5103
COURT FILE NO.: CV-16-566248-00CP
DATE: 2020/08/26

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**NATALIA KARASIK, RAHUL SURYAWANSHI
and ELIE CHAMI**

Plaintiffs

- and -

YAHOO! INC. and YAHOO! CANADA CO.

Defendants

REASONS FOR DECISION

PERELL J.

Released: August 26, 2020.