

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

In Re Yahoo! Litigation

Case No.: CV 06-2737 CAS
(FMOx)

**ORDER GRANTING
PRELIMINARY SETTLEMENT
APPROVAL**

Honorable Christina A. Snyder

This matter is before the Court pursuant to the motion of Plaintiffs in the above-captioned class action (the “Action”) for preliminary approval of the settlement Plaintiffs reached with defendant Yahoo! Inc. (“Yahoo!”). Plaintiffs have moved for an order approving the settlement of the Action in accordance with the Settlement Agreement dated September 16, 2009 between Plaintiffs and Yahoo! (the “Settlement Agreement”). Having read and considered the Settlement Agreement, and based upon familiarity with the files and proceedings in this matter, the Court finds that:

1. The Action was commenced on May 4, 2006, and a Consolidated Amended Class Action Complaint was filed on July 13, 2006. Class Representatives filed a Second Consolidated Amended Class Action Complaint on November 20, 2006, which contained causes of action for breach of contract, restitution/unjust enrichment/money had and received, misrepresentation and civil conspiracy, and violation of California Business and Professions Code §§ 17200, *et seq.*;

1 2. Yahoo! has vigorously contested the allegations;

2 3. Following extensive settlement discussions, including four
3 mediations, the most recent of which was supervised by the Honorable Gary L.
4 Taylor, United States District Judge (Retired), the parties have entered into a
5 Settlement Agreement that has been filed with the Clerk of the United States
6 District Court for the Central District of California;

7 4. The Court has reviewed the Settlement Agreement and determined it
8 to be within the range of possible approval; and

9 5. The Court has reviewed the notice provisions of Paragraph 59 of the
10 Settlement Agreement, and the forms of notice attached to the Settlement
11 Agreement as Exhibits 3 and 4, and the Court has determined that the form,
12 content and manner of dissemination of the notices constitute the best notice
13 practicable under the circumstances.

14 Accordingly, it is hereby **ORDERED** as follows:

15 6. The motion is GRANTED. The Settlement Agreement is hereby
16 preliminarily approved. Unless otherwise specified, all capitalized terms herein
17 that are defined terms in the Settlement Agreement shall have the same meaning as
18 in the Settlement Agreement.

19 7. The following Class is provisionally certified for settlement purposes
20 only:

21 **All Persons that purchased, directly or indirectly, Yahoo! Ads in the**
22 **U.S. Marketplace from May 1, 2000, through and including the date**
23 **the Court grants preliminary approval of the Agreement.**

24 8. Plaintiffs Crafts by Veronica, Mika's Wedding, and True
25 Communication, Inc. d/b/a Metrodate.com are designated as Class Representatives.

1 9. The Court appoints the following as Plaintiffs' Co-Lead Counsel:
2 Michael J. Boni, Boni & Zack LLC and Michael D. Donovan, Donovan Searles
3 LLC.

4 10. A final settlement/fairness hearing shall be held on January 11, 2010,
5 at 10:00 a.m. (the "Hearing") before the undersigned in Courtroom 5, United States
6 District Court for the Central District of California, Western Division – Spring
7 Street Courthouse, 312 N. Spring Street, Los Angeles, CA 90012. The purpose of
8 the Hearing shall be to determine: (a) whether the terms and conditions of the
9 proposed Settlement Agreement are fair, reasonable, and adequate; (b) whether to
10 certify the Class for purposes of the settlement; and (c) whether the proposed
11 Settlement Agreement should be approved by the Court and judgment entered
12 thereon. At the Hearing, or such adjourned date as the Court deems appropriate,
13 Class Counsel and any interested person who has properly and timely filed a notice
14 of objection to the Settlement Agreement (following the procedure set forth in the
15 Notice (as defined below) and the Settlement Agreement) shall be heard on the
16 fairness, reasonableness and adequacy of the terms of the Settlement Agreement
17 and on Class Counsel's application for an award of attorneys' fees and
18 reimbursement of expenses and for service awards to Class Representatives as set
19 forth in the Settlement Agreement.

20 11. The Court preliminarily approves the proposed Settlement
21 Agreement, including the procedures for notice, requesting exclusion from the
22 settlement, and objection, as described therein, as fair, reasonable, and in the best
23 interests of the Class.

24 12. The Court reserves the right to adjourn the Hearing or order any
25 adjournment without further notice other than an oral announcement at or prior to
26 the Hearing. The Court also reserves the right to approve the proposed Settlement
27 Agreement at or after the Hearing with or without modification as consented to by
28

1 the parties to the Settlement Agreement and without further notice to the Class.
2 The Court shall retain jurisdiction to consider all applications arising
3 out of or connected with the proposed Settlement Agreement.

4 13. The Court approves as to form, content and method of dissemination
5 the Notice of Class Action Settlement (“Notice”) and the Summary Notice of Class
6 Action Settlement (the “Summary Notice”) substantially in the forms attached to
7 the Settlement Agreement as Exhibits 3 and 4.

8 14. The Court approves the form and content of the Claim Form
9 substantially in the form attached to the Settlement Agreement as Exhibit 1.

10 15. Rust Consulting, Inc. is approved to serve as Claims Administrator.

11 16. No later than twenty (20) calendar days after entry of this Order, the
12 Claims Administrator shall send a copy of the Notice to all Class Persons via
13 electronic mail (“email”) using the email addresses in Yahoo!’s electronic records
14 that the Class Person supplied to Yahoo! in connection with the Yahoo! Ads. In
15 the event that such electronic notice is returned as undeliverable to the Claims
16 Administrator, the Claims Administrator will, no later than twenty (20) calendar
17 days after the date on which the notice was returned, send a copy of the Notice to
18 that Class Person via the United States Postal Service using the physical mailing
19 address, if any, in Yahoo!’s electronic records that the Class Person supplied to
20 Yahoo! in connection with Yahoo! Ads. No skip trace or re-mailing of returned
21 mail shall be required.

22 17. No later than twenty (20) calendar days after entry of this Order, the
23 Claims Administrator also shall cause the Notice to be published in the national
24 and international editions of *U.S.A. Today* as set forth in the Settlement
25 Agreement.

26 18. No later than twenty (20) calendar days after entry of this Order, the
27 Claims Administrator shall post the Claim Form on the Settlement Website. Any
28 Class Member wishing to apply for the Refund must: complete and submit the

1 Claim Form online (or in paper form if the Class Member downloads the paper
2 version of the Claim Form on the Settlement Website or requests such paper form
3 from the Claims Administrator) not later than One Hundred Sixty (160) days from
4 the date that the Claims Administrator first posts the Claim Form on the Settlement
5 Website.

6 19. At least ten (10) court days prior to the Hearing, the Claims
7 Administrator shall certify compliance with the provisions of paragraphs 16, 17,
8 and 18 of this Order by declaration describing the aforementioned electronic
9 mailings, postal mailings and publications.

10 20. At least ten (10) court days prior to the Hearing, Class Counsel shall
11 file with the Court a motion for final settlement approval and supporting papers,
12 and an application for attorneys' fees and reimbursement of expenses and for
13 service awards to Class Representatives and supporting papers.

14 21. The form and method of Notice and Summary Notice specified in the
15 Settlement Agreement are hereby approved and determined to be the best notice
16 practicable under the circumstances, and the Court finds that the Notice and
17 Summary Notice comply with the requirements of Rule 23 of the Federal Rules of
18 Civil Procedure and with applicable standards of due process.

19 22. Class Persons will be excluded from the settlement only if they timely
20 complete the online opt-out form or timely submit a written statement requesting
21 exclusion from the Class as set forth in the Notice and the Settlement Agreement.
22 Any written request for exclusion must be personally executed by the Class Person
23 and must contain the Class Person's name and address, and Yahoo! Ads Client
24 Identification Number(s). Any written request for exclusion must be submitted
25 online or returned by postal mail to the Claims Administrator at the address
26 specified in the Notice not later than sixty (60) calendar days from the date the
27 Claims Administrator first sends the Notice to Class Persons via email. The date
28 of the online submission, or of the postmark on the envelope containing the request

1 for exclusion, shall be the sole and exclusive method of determining whether the
2 request for exclusion was timely submitted. Unless they have excluded
3 themselves, Class Persons shall be bound by all determinations and judgments in
4 this case Relating To the proposed settlement, whether favorable or unfavorable,
5 including the dismissal of the Action with prejudice and the release of Yahoo!
6 from liability to the Class. Persons who timely exclude themselves from the Class
7 in accordance with the procedures prescribed in the Notice and Settlement
8 Agreement will not be bound by any orders or judgments entered in the Action
9 Related To the proposed settlement, shall not be entitled to any benefits provided
10 for in the proposed Settlement Agreement in the event it is approved by the Court,
11 and shall have no standing to enforce any provision of the Settlement Agreement.

12 23. Class Persons who do not exclude themselves may enter an
13 appearance on their own behalf or through counsel of their own choice at their own
14 expense. If they do not enter an appearance, they will be represented by Class
15 Counsel.

16 24. Any Class Member who objects to: (i) the proposed Settlement
17 Agreement; (ii) certification of the Class; (iii) dismissal of the Action or the
18 judgment and releases to be entered with respect thereto; and/or (iv) Class
19 Counsel's application for attorneys' fees and reimbursement of expenses to Class
20 Counsel and for service awards to the Class Representatives; or who otherwise
21 wishes to be heard, may only appear at the Hearing and present relevant evidence
22 or argument in person or through counsel if that Person has timely and properly
23 filed a statement of objection as set forth in the Notice and the Settlement
24 Agreement. No Class Member shall be entitled to be heard at the Hearing, whether
25 individually or through counsel, unless, no later than sixty (60) calendar days from
26 the date the Claims Administrator first sends the Notice to Class Persons via email,
27 written notice of the Class Member's intention to appear at the Hearing shall have
28 been filed with the Court and served by email or postal mail on counsel listed

1 below. Any objection must contain: (a) the objector's name and Yahoo! Ads
2 Client Identification Number(s); (b) a statement of whether the objector intends to
3 appear at the Final Approval Hearing, either in person or through counsel, and, if
4 through counsel, identifying counsel by name, address, and phone number; and (c)
5 a statement of the grounds for his, her or its objection.

6
7 **Court:**

8 Office of the Clerk
9 U.S. District Court for the Central District of California, Western Division
10 312 N. Spring Street
11 Los Angeles, CA 90012

12 **Counsel for Plaintiffs and the Class:**

13 Michael J. Boni
14 Joshua D. Snyder
15 Boni & Zack LLC
16 15 Saint Asaphs Road
17 Bala Cynwyd, PA 19004
18 mboni@bonizack.com
19 jsnyder@bonizack.com

20 Michael D. Donovan
21 Donovan Searles, LLC
22 1845 Walnut Street, Suite 1100
23 Philadelphia, PA 19103
24 mdonovan@donovansearles.com

25 **Counsel for Yahoo!:**

26 Larry W. McFarland, Esq.
27 Dennis L. Wilson, Esq.
28 Keats McFarland & Wilson LLP
9720 Wilshire Boulevard
Penthouse Suite
Beverly Hills, CA 90212
lmcfarland@kmwlaw.com
dwilson@kmwlaw.com

1 25. Any Class Member who retains an attorney to make objections to the
2 proposed settlement on behalf of the Class Member or otherwise to represent the
3 Class Member in this litigation does so at the Class Member's own expense. Any
4 such attorney must file a notice of appearance in this litigation with the Clerk of
5 this Court and serve copies of the notice on the attorneys listed in Paragraph 24
6 above, no later than sixty (60) calendar days from the date the Claims
7 Administrator first sends the Notice to Class Persons via email. Any objection not
8 timely made and in the manner provided herein shall be deemed waived and
9 forever barred.

10 26. Pending final determination of whether the proposed Settlement
11 Agreement should be approved, Class Representatives and all Class Persons, either
12 individually, directly, representatively, derivatively or in any other capacity, are
13 barred and enjoined from commencing or prosecuting any action or proceeding
14 asserting any claims whatever on behalf of themselves or the Class against Yahoo!
15 that were brought or could have been brought in the Second Consolidated
16 Amended Class Action Complaint, and that Relate To or arise out of the claims as
17 described in that complaint, including without limitation the Released Claims.

18 27. If the Court does not grant final approval of the Settlement
19 Agreement, or if the settlement does not become effective for any reason
20 whatsoever, the Settlement Agreement (including any modification thereof made
21 with the consent of the parties as provided therein), any Class certification herein
22 and any actions taken or to be taken in connection therewith (including this Order
23 and any judgment entered herein) shall be terminated and shall become void and
24 have no further force and effect, except as provided in the Settlement Agreement.

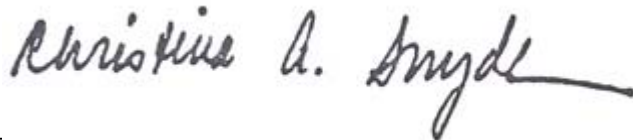
25 28. The Settlement Agreement and any proceedings taken pursuant
26 thereto are not, and should not in any event be: (a) offered or received as evidence
27 of a presumption, concession or admission on the part of any of Plaintiffs, Yahoo!,
28 any Class Person, or any other Person; or (b) offered or received as evidence of a

1 presumption, concession or admission by any person of any liability, fault,
2 wrongdoing or other dereliction of duty.

3 29. The Court reserves jurisdiction over the subject matter and as to each
4 party to the Settlement Agreement with respect to the interpretation, effectuation,
5 and implementation of the Settlement Agreement in accordance with the terms
6 thereof for all purposes, including enforcement of any of the terms thereof at the
7 instance of any party and resolution of any disputes that may arise.

8 **IT IS SO ORDERED.**

9
10
11 Dated: September 22, 2009



12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
-
HONORABLE CHRISTINA A. SNYDER
United States District Judge