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ERIC HOLLAND and CODY BAKER,
on behalf of themselves and all others similarly
situated,

Plaintiffs,

vs.

YAHOO! INC.,

Defendant.

Case No. 5:13-cv-04980-LHK

**STIPULATION AND [PROPOSED] ORDER
APPOINTING GIRARD GIBBS LLP AND
KAPLAN FOX & KILSHEIMER LLP AS
INTERIM CLASS COUNSEL**

1 HALIMA NOBLES, on behalf of Herself and all
2 others similarly situated,

3 Plaintiffs,

4 v.

5 YAHOO! Inc., a Delaware Corporation, and DOES
6 1-10, inclusive

7 Defendants.

Case No.: 5:13-cv-04989-LHK

8 BRIAN PINCUS, on behalf of himself and all
9 others similarly situated,

10 Plaintiff,

11 vs.

12 YAHOO! INC., a Delaware corporation,

13 Defendant.

Case No.: 5:13-cv-05326-LHK

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

16 Plaintiff,

17 vs.

18 YAHOO! INC., a California Corporation,

19 Defendant.

Case No.: 5:13-cv-05388-LHK

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Attorneys for Plaintiff Rebecca Abrams

Pursuant to Federal Civil Rule 23(g), Plaintiffs Eric Holland, Cody Baker, Halima Nobles, Brian Pincus, and Rebecca Abrams in the above-captioned actions (“the Related Actions”) respectfully request that the Court appoint Girard Gibbs LLP and Kaplan Fox & Kilsheimer LLP as interim class counsel to prosecute the Related Actions on behalf of Plaintiffs and the proposed class members. Defendant Yahoo! Inc. (“Yahoo”) takes no position on the appointment of interim class counsel. Plaintiffs stipulate as follows:

I. FACTUAL AND PROCEDURAL BACKGROUND

A. The Court Related Six Proposed Class Actions Against Yahoo Alleging Email Privacy Violations

1. Beginning October 2, 2013, six proposed class actions have been filed in the Northern District of California against Yahoo generally alleging that Yahoo’s practices of scanning and analyzing of email violates consumers’ privacy rights. In each case the Plaintiffs propose to represent identical or substantially overlapping classes of non-Yahoo! Mail subscribers and all Plaintiffs assert claims under California’s Invasion of Privacy Act (the “California Wiretap Act” or “CIPA”). Four of the six actions also assert federal claims under Title I of the Electronic Communications Privacy Act (the federal “Wiretap Act”), 28 USC § 2510 *et seq.* Yahoo denies the allegations in Plaintiffs’ complaints. The six actions filed to date include:

Case Name	Case No.	Date Filed
<i>Kevranian, et al., v. Yahoo! Inc.</i>	5:13-cv-04547-LHK	10/02/13
<i>Zelaya, et al., v. Yahoo! Inc.</i>	5:13-cv-04619-LHK	10/04/13
<i>Holland, et al., v. Yahoo! Inc.</i>	5:13-cv-04980-LHK	10/25/13
<i>Nobles, et al., v. Yahoo! Inc.</i>	5:13-cv-04989-LHK	10/25/13
<i>Pincus v. Yahoo! Inc.</i>	5:13-cv-05326-LHK	11/15/13
<i>Abrams v. Yahoo! Inc.</i>	5:13-cv-05388-LHK	11/20/13

2. On October 30, 2013, Yahoo filed an administrative motion to relate the first three filed cases to the pursuant to Civil Local Rule 3-12(a). Plaintiffs Holland and Baker filed a statement in

1 support of relating the cases on November 1, 2013. Plaintiffs Pincus and Abrams subsequently filed
2 administrative motions to relate their cases once their complaints were filed. No oppositions were filed
3 in response to the parties' motions to relate the cases.

4 3. On December 18, 2013, the Court granted the parties' Administrative Motions to
5 Consider Whether the Cases Should be Related. In its Order, the Court found that the cases "involve the
6 same defendant, *Yahoo!*, and involve substantially the same basic allegations." *Kevranian et al. v.*
7 *Yahoo!, Inc.*, Order Relating Cases, at 2, Case No. 5:13-cv-04547 (*Kevranian* Dkt. 27). The Court
8 agreed that there "will be an unduly burdensome duplication of labor and expense or conflicting results
9 if the cases are conducted before different Judges." *Id.* The Court related all six of the pending actions
10 against Yahoo to the first filed *Kevranian* Action.

11 **B. The Parties Have Stipulated To Consolidate The Related Actions**

12 1. Plaintiffs Kevranian, Zapata, Zelaya and Campos filed a Joint Motion to Appoint
13 Cotchett, Pitre & McCarthy, LLP, and Kirtland & Packard LLP as Interim Lead Class Counsel on
14 November 5, 2013 ("*Kevranian* Motion"). On January 2, 2013, Plaintiffs Holland and Baker filed a
15 Motion to Consolidate the Related Cases and to Appoint Girard Gibbs LLP as Interim Lead Counsel
16 ("*Holland* Motion"). The *Holland* Motion was supported by the Declaration of Matthew B. George
17 (attached hereto as Exhibit A). Plaintiffs Holland and Baker also filed a statement in response to the
18 *Kevranian* Motion. On January 2, 2013, Plaintiff Pincus also filed a Motion to Consolidate the Related
19 Actions and to Appoint Kaplan Fox & Kilsheimer LLP as Interim Lead Counsel ("*Pincus* Motion").
20 The *Pincus* Motion was supported by the Declaration of Laurence D. King (attached hereto as Exhibit
21 B). Plaintiff Pincus also filed a statement in response to the *Kevranian* Motion. The *Kevranian*,
22 *Holland*, and *Pincus* Motions were all set for hearing on March 27, 2014 at 1:30 p.m.

23 2. On January 8, 2014, the *Kevranian* and *Zelaya* Plaintiffs filed stipulations to dismiss their
24 actions, which were granted by the Court on January 9, 2014. Accordingly, the *Kevranian* Motion is
25 moot.

26 3. Counsel for Plaintiffs in the four remaining actions and Yahoo have met and conferred
27 and agree that this District Court should exercise its "broad discretion" to consolidate these Related
28 Cases that involve "a common question of law or fact." Fed. R. Civ. P. 42(a). The parties are preparing

1 and filing a separate stipulation for the Court to consider whether to consolidate the Related Actions for
2 the purposes of efficiency and to streamline the litigation. Should the Court consolidate the Related
3 Actions, Plaintiffs have agreed to file a consolidated complaint 28 days after consolidation and the
4 parties have negotiated a briefing schedule on Yahoo's anticipated motion to dismiss.

5 **C. Plaintiffs Request Appointment of Girard Gibbs LLP and Kaplan Fox &**
6 **Kilsheimer LLPs Co-Lead Interim Class Counsel**

7 1. Plaintiffs in the Related Actions have also agreed on a proposed leadership structure of
8 co-lead interim class counsel consisting of Girard Gibbs LLP and Kaplan Fox & Kilsheimer LLP. Both
9 firms have significant, relevant qualifications that support their appointment as interim lead counsel
10 under Federal Civil Rule 23(g) and have worked successfully together in prior litigation. *See In re Pre-*
11 *Filled Propane Tank Marketing and Sales Practices Litigation*, Case No. 4:09-cv-00465-GAF (W.D.
12 Mo.) (served as two of four lead counsel firms in antitrust and consumer fraud action that recovered over
13 \$10 million); *In re Wal-Mart Stores, Inc. Delaware Derivative Litigation*, Consolidated C.A. No. 7455-
14 CS (appointed as two of four lead counsel firms in shareholder litigation pending against Wal-Mart
15 regarding its alleged violations of the Foreign Corrupt Practices Act) (Del. Ch. Ct.); *In re Winstar*
16 *Communications Securities Litigation*, 01-Civ. 3014 (joint representation of various institutional
17 investors affiliated with Allianz A.G. in "opt-out" securities action). As detailed in the Declarations of
18 Matthew B. George and Laurence D. King filed in support of the *Holland* and *Pincus* Motions (and
19 submitted herewith), each firm has already invested significant time and effort into investigating the
20 claims, analyzing the technological and legal issues that will drive the litigation, coordinating efforts
21 with plaintiffs' counsel in the other cases, and have worked with an expert who has a background in the
22 very issues raised by this case. Each firm has also previously litigated cases asserting privacy claims
23 and has vast experience in litigating class action cases. The firms also have the resources to commit to
24 prosecuting this case on behalf of the plaintiffs and proposed class and will do so in an efficient manner.
25 Plaintiffs have conferred with Yahoo's counsel and have been informed that Yahoo takes no position on
26 the appointment of co-lead interim class counsel.

1 **II. STIPULATION**

2 **A. The Related Cases Are Consolidated**

3 ACCORDINGLY, IT IS HEREBY AGREED, by and between the attorneys of record for the
4 undersigned plaintiffs, that:

5 1. Pursuant to Federal Rule of Civil Procedure 23(g), the Court appoints Girard Gibbs LLP
6 Kaplan Fox & Kilsheimer LLP as Co-Lead Interim Class Counsel for the Plaintiffs in the Related
7 Actions and Co-Lead Interim Class Counsel shall also serve in the same capacity should the Court
8 consolidate the Related Actions.

9 2. Interim Class Counsel shall have sole authority over all matters concerning the
10 prosecution of the case on behalf of Plaintiffs, including: (a) coordinating all proceedings, including
11 preparing, structuring, and presenting pretrial and other case management related orders; (b) convening
12 meetings of counsel; (c) communicating with defense counsel; (d) the initiation, response, scheduling,
13 briefing and argument of all motions; (e) the scope, order and conduct of all discovery proceedings; (f)
14 assigning non-duplicative work to be performed by other Plaintiffs' counsel as appropriate; (g) retaining
15 experts; (h) appearing on behalf of Plaintiffs at all court conferences, hearings, and trial; (i) the timing
16 and substance of any settlement negotiations and settlement; and (k) allocating any attorneys' fees
17 awarded by the Court among the various counsel doing work on the case.

18 3. As a result of this stipulation, plaintiffs' related motions for for appointment of Interim
19 Lead Counsel have been withdrawn. Should the Court also grant the parties' stipulation to consolidate
20 the Related Actions the March 27, 2014 hearing on the motions for appointment of lead counsel is
21 VACATED.

22
23 Dated: January 21, 2014

GIRARD GIBBS LLP

24
25 By: Daniel C. Girard
Daniel C. Girard
26 Matthew B. George
Heidi H. Kalschur

27 *Attorneys for Plaintiffs Holland and Baker*

1 Dated: January 21, 2014

KAPLAN FOX & KILSHEIMER LLP

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3 By: Laurence D. King
4 Laurence D. King
5 Linda M. Fong
6 Mario M. Choi
7 David A. Straite

Attorneys for Plaintiff Pincus

8 Dated: January 21, 2014

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10 By: Reginald Von Terrell
11 Reginald Von Terrell
12 Sydney J. Hall

Attorneys for Plaintiff Nobles

13 Dated: January 21, 2014

POMERANTZ LLP

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15 By: Jeremy A. Lieberman
16 Jeremy A. Lieberman
17 Lesley F. Portnoy

Attorneys for Plaintiff Abrams

18 **PURSUANT TO STIPULATION, IT IS SO ORDERED**

19
20
21 Dated: 1/22/2014


United States District Judge Lucy H. Koh

ATTESTATION

I, Matthew B. George, am the ECF User whose ID and password are being used to file this document. In compliance with Local Rule 5-1(i)(3), I hereby attest that all other signatories listed have concurred in this filing.

Dated: January 21, 2014

By: /s/ Matthew B. George
Matthew B. George

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