

1 MARC M. SELTZER (54534)  
 mseltzer@susmangodfrey.com  
 2 STEVEN G. SKLAVER (237612)  
 sklaver@susmangodfrey.com  
 3 SUSMAN GODFREY L.L.P.  
 1901 Avenue of the Stars, Suite 950  
 4 Los Angeles, California 90067-6029  
 [Tel.] (310) 789-3100  
 5 [Fax] (310) 789-3150

6 Attorney for Plaintiff Aman Abye

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**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

AMAN ABYE, on behalf of himself and all  
 others similarly situated,

Plaintiff,

vs.

YAHOO! INC.

Defendant.

Case No: 5-16-cv-7354

**CLASS ACTION**

**COMPLAINT FOR DAMAGES AND  
 DECLARATORY RELIEF**

1 Plaintiff, by and through his attorneys, complains and alleges as follows:

2 **INTRODUCTION**

3 1. Yahoo! Inc. (“Yahoo”) is a multinational technology company that operates a  
4 search engine and web portal, along with a host of related services including Yahoo! News,  
5 Yahoo! Finance, Yahoo! Mail, and more. It is the world’s highest-read news and multimedia  
6 website and the fifth most visited website globally, with over 1 billion total users and hundreds of  
7 millions of monthly users.

8 2. On December 14, 2016, Yahoo announced that a 2013 data breach had  
9 compromised the account information of over 1 billion users (“2013 Breach”). The breach  
10 included MD5-hashed (i.e., weakly) encrypted passwords; sensitive user information such as  
11 names, telephone numbers, and dates of birth; and encrypted and unencrypted answers to security  
12 questions that could be used to compromise other accounts.

13 3. This breach was the result of substandard data security practices that, by 2013,  
14 were well known in the technology field to leave Yahoo particularly vulnerable to intrusion.

15 4. The December 2016 announcement followed shortly on the heels of a September  
16 2016 announcement that at least 500 million user accounts had been compromised in a separate  
17 2014 data breach, which is already the subject of litigation in this District.

18 5. This is a class action brought on behalf of a nationwide Class of Yahoo account  
19 owners—described herein as “users”—for breach of express and implied warranties of contract,  
20 breach of the implied covenant of good faith and fair dealing, and violation of California unfair  
21 competition, consumer protection, and data privacy laws. All allegations herein are based on  
22 information and belief except for those relating to Plaintiff and his own actions.

23 6. Plaintiff seeks damages stemming from at least the following:

- 24 a. Loss of value of personally identifiable information;
- 25 b. Consequential out-of-pocket expenses;
- 26 c. Benefit of the bargain loss; and
- 27 d. Punitive damages.

1 **JURISDICTION AND VENUE**

2 7. Plaintiff brings this class action on behalf of all United States Yahoo users whose  
3 accounts were affected. As less than one third of the members of the proposed class are likely to  
4 reside in California, this Court has subject matter jurisdiction over these claims pursuant to 28  
5 U.S.C. § 1332(d).

6 8. Venue is proper pursuant to 28 U.S.C. § 1391(b).

7 9. Class members were injured in this District and Yahoo is headquartered in this  
8 District.

9 **PARTIES**

10 10. Plaintiff Aman Abye is a California resident who, like other members of the class,  
11 received an email on December 14, 2016, notifying him that his personal information had been  
12 compromised.

13 11. Defendant Yahoo! Inc. is a Delaware Limited Liability Company and has its  
14 headquarters and principal place of business at 701 First Avenue, Sunnyvale, CA.

15 **FACTUAL ALLEGATIONS**

16 **A. Yahoo's Business**

17 12. Yahoo describes itself as “a guide to digital information discovery, focused on  
18 informing, connecting, and entertaining through its search, communications, and digital content  
19 products,” and claims more than 500 million monthly users.

20 13. Yahoo's business consists of three user-oriented areas: search, communications,  
21 and digital content. In October 2016, Yahoo Search handled 11.7% of all U.S. search queries, or  
22 1.78 billion search queries. Yahoo Mail is the second-most popular email service based on  
23 website visits and has 81 million U.S. users, and Yahoo Mail generates significant revenue for  
24 Yahoo. Yahoo's messaging and social media platforms contribute significantly to revenue as  
25 well. Yahoo's digital content includes News, Sports, Finance, Lifestyle, and more. These areas  
26 combine to make Yahoo sites cumulatively the fifth most visited on the web.

1           14.     Yahoo derives virtually the entirety of its revenue from advertising through search,  
2 display, and native advertising, including mobile advertising. Critical to Yahoo’s appeal to  
3 advertisers is their ability to target advertisements based upon personal information. Yahoo  
4 prominently features this ability to collect personal information, target specific demographics, and  
5 track users’ browsing and offline habits in its pitch to advertisers.

6           **B.     Yahoo’s Data Security Practices**

7           15.     Yahoo’s overall security has long been known as unusually lax among its Internet  
8 competitors. Yahoo did not hire a dedicated chief information security officer until 2014, four  
9 years after a major breach across technology companies had prompted competitors such as  
10 Google to rapidly improve their information security, and one year after information leaked by  
11 Edward Snowden identified Yahoo as a frequent target of foreign hackers due to its vulnerability.  
12 Within Yahoo, security concerns were repeatedly dismissed out of concern for cost and user  
13 convenience. For example, while Google began in 2010 to pay hackers “bug bounties” to identify  
14 security flaws in its services, Yahoo did not follow suit until 2013, after large-scale breaches were  
15 made public in 2012 and 2013. See generally Nicole Perlroth & Vinu Goel, “Defending Against  
16 Hackers Took a Back Seat at Yahoo, Insiders Say,” N.Y. TIMES, Sept. 29, 2016, at B1.

17           16.     Despite numerous past breaches, it was not until this year’s set of massive data  
18 breaches were announced that Yahoo took the simplest and most obvious step of requiring all  
19 users to reset their passwords. Yahoo’s reticence in disclosing and reacting to data breaches  
20 undoubtedly compounded the harm caused by the data breach underlying this litigation.

21           17.     Yahoo’s password security, as of the 2013 Breach, was based upon the Message  
22 Digest algorithm 5 (“MD5”) hash method. An MD5 hash turns any combination of characters  
23 into a theoretically unique hash of characters that cannot be reverse-engineered. However, any  
24 given combination of characters will always return the same hash; for example, “password” will  
25 always return a hash of “cc3a0280e4fc1415930899896574e118,” so that if a hacker finds that  
26 hash he or she can deduce that the user’s password is “password.”

1           18. Long before the 2013 Breach, this method was widely used in cryptographic  
2 security, because a hacker would have to guess the precise password ex ante and compare the  
3 hash values. However, as computer processing became ever cheaper and more powerful long  
4 before the 2013 Breach, breaking hashes through brute force computing became ever more  
5 feasible. At the time of the 2013 Breach, the MD5 hash technique used by Yahoo was widely  
6 known to be a wholly inadequate method of password security. In fact, at the time, there were  
7 tables freely available online that contain vast numbers of hash values corresponding to the most  
8 common passwords.

9           19. In addition, flaws in the hashing algorithm itself started to become apparent in  
10 1996, such that two different inputs could “collide” and generate the same hash. By 2004  
11 researchers demonstrated that a hacker could use a “collision attack” based upon these flaws to  
12 spoof a security certificate and cause a user to provide information to a malicious website. This  
13 vulnerability caused Carnegie Mellon University’s Software Engineering Institute’s CERT  
14 division, which is sponsored by the Department of Homeland Security, to warn that “[s]oftware  
15 developers, Certification Authorities, website owners, and users should avoid using the MD5  
16 algorithm in any capacity,” declaring the MD5 algorithm “cryptographically broken and  
17 unsuitable for further use.”

18           20. While Yahoo realized internally the need to move away from the MD5 method at  
19 the time of the 2013 Breach, and had started on plans for doing so, it was far too late in making  
20 these plans and was still using this inadequate method at the time of the 2013 Breach. Moreover,  
21 Brian Krebs, a leading data security researcher discussing the 2013 Breach, concluded that “even  
22 by 2013 anyone with half a clue in securing passwords already long ago knew that storing  
23 passwords in MD5 format was no longer acceptable and [an] altogether braindead idea.”

24           21. As a result of Yahoo’s outdated password encryption technology, hackers who  
25 have acquired MD5-hashed passwords can easily reverse-engineer a vast number of users’  
26 passwords and gain access to their accounts.

1           **C.     The 2013 Breach**

2           22.     On December 14, 2016, Yahoo disclosed that over one billion user accounts had  
3     been compromised. It stated that “the stolen user account information may have included names,  
4     email addresses, telephone numbers, dates of birth, hashed passwords (using MD5) and, in some  
5     cases, encrypted or unencrypted security questions and answers.”

6           23.     Yahoo has not yet been able to identify how the 2013 Breach occurred, though it  
7     believes the same eastern European hackers responsible for a later 2014 data breach may have  
8     been involved.

9           24.     While the mechanisms of the 2013 breach are unclear, the potential consequences  
10    are immense. As early as 2015 security researchers had found hackers on the “dark web” offering  
11    to sell information on 1 billion Yahoo users. These researchers had attempted through an  
12    intermediary to inform Yahoo, but were dismissed. Accordingly, despite the availability of user  
13    data for sale, Yahoo has professed ignorance of the breach until it was informed by government  
14    agencies.

15           **D.     Yahoo’s Violation of Its Terms of Service**

16           25.     Upon information and belief, every user who creates a Yahoo account must agree,  
17    at the time, to Yahoo’s terms of service. Accordingly, every user whose account information was  
18    disclosed in the 2013 breach would already have entered into the Terms of Service with Yahoo.

19           26.     Yahoo’s Terms of Service incorporate by reference its Privacy Policy, which  
20    states, inter alia:

21           a.     “We are committed to ensuring your information is protected and apply  
22    safeguards in accordance with applicable law.”

23           b.     “Yahoo does not rent, sell, or share personal information about you with  
24    other people or non-affiliated companies except to provide products or services you’ve requested,  
25    when we have your permission, or under [certain inapplicable circumstances].”

1 c. “We limit access to personal information about you to employees who we  
2 believe reasonably need to come into contact with that information to provide products or  
3 services to you or in order to do their jobs.”

4 d. “We have physical, electronic, and procedural safeguards that comply with  
5 federal regulations to protect personal information about you.”

6 27. Contrary to Yahoo’s assurances, it has not complied with its legal and regulatory  
7 obligations. The Federal Trade Commission (“FTC”) has come to define unfair methods of  
8 competition through three factors: “(1) whether the practice injures consumers; (2) whether it  
9 violates established public policy; (3) whether it is unethical or unscrupulous.” The FTC has used  
10 this definition to bring enforcement actions on numerous occasions against entities that have  
11 failed to protect consumers’ privacy.

12 28. Yahoo included these provisions in its privacy policy with the intent and effect that  
13 users would rely upon them in entrusting their sensitive personal information to Yahoo.

14 29. Contrary to Yahoo’s assurances, it has not protected users’ data from other people,  
15 nor has it limited access to personal information to certain employees.

16 **E. Consequences of Yahoo’s Breach**

17 30. Information from the Yahoo accounts has been for sale on the “dark web” since at  
18 least August 2015. Such information could be used for identity theft, to propagate spam emails to  
19 users’ contacts, to access to users’ other accounts, and for blackmail, among other uses.

20 31. Yahoo, in an online FAQ about the December 2016 breach, specifically  
21 recommended that, among other steps, users (a) obtain credit reports and (b) place a security  
22 freeze on their credit files at three consumer reporting agencies at a cost of up to \$10 each (noting  
23 also that placing, lifting, and/or removing security freezes could cost between \$5 and \$20 per  
24 action).

25 32. Additional protections that are necessary to users whose security was hacked  
26 include identity theft and credit monitoring, which tends to cost roughly \$18 to \$30 per month,  
27 and identity theft insurance, which ranges from \$25 to \$60 per year.







1 a. “We are committed to ensuring your information is protected and apply  
2 safeguards in accordance with applicable law.”

3 b. “Yahoo does not rent, sell, or share personal information about you with  
4 other people or non-affiliated companies except to provide products or services you’ve requested,  
5 when we have your permission, or under [certain inapplicable circumstances].”

6 c. “We limit access to personal information about you to employees who we  
7 believe reasonably need to come into contact with that information to provide products or  
8 services to you or in order to do their jobs.”

9 d. “We have physical, electronic, and procedural safeguards that comply with  
10 federal regulations to protect personal information about you.”

11 46. This breach caused injuries to Yahoo’s users as described herein.

12 **SECOND CAUSE OF ACTION**

13 **Breach of Contract**

14 **(Implied Warranties)**

15 47. Plaintiff, on behalf of himself and the Class, incorporates and re-alleges the  
16 preceding paragraphs of the complaint.

17 48. To the extent that the Terms of Service and Privacy Policy did not form an express  
18 contract, the opening of a Yahoo account created an implied contract between Yahoo and the  
19 User, with its terms delineated as set forth supra by the Terms of Service and the Privacy Policy.

20 49. Yahoo breached such an implied contract by failing to adhere to the terms of the  
21 Privacy Policy. This breach caused injuries to Yahoo’s users as described herein.

22 **THIRD CAUSE OF ACTION**

23 **Breach of Contract**

24 **(Bailment)**

25 50. Plaintiff, on behalf of himself and the Class, incorporates and re-alleges the  
26 preceding paragraphs of the complaint.



1 **FIFTH CAUSE OF ACTION**

2 **Negligence**

3 58. Plaintiff, on behalf of himself and the Class, incorporates and re-alleges the  
4 preceding paragraphs of the complaint.

5 59. Yahoo's users have an interest in the protection of their personally identifiable  
6 information.

7 60. Yahoo's security practices fell below commercially reasonable standards with  
8 respect to the protection of that information.

9 61. Yahoo's negligence was the cause of harm to consumers in the form of exposure  
10 of their personally identifiable information.

11 **SIXTH CAUSE OF ACTION**

12 **Violation of California's Unfair Competition Law ("UCL"),**

13 **Cal. Bus. & Prof. Code §§ 17200, et seq.**

14 62. Plaintiff, on behalf of himself and the Class, incorporates and re-alleges the  
15 preceding paragraphs of the complaint.

16 63. Plaintiff and the class have suffered injury in fact and a loss of money or property  
17 in the following ways:

18 a. Users have lost the benefit of the bargain they entered into when they  
19 entrusted their data to Yahoo;

20 b. Users have had their present and future property interest in their personally  
21 identifiable information diminished;

22 c. Users have been deprived of the exclusive use of their personally  
23 identifiable information;

24 d. Users will be required to enter into future costly transaction such as credit  
25 report freezes, credit and identity theft monitoring, identity theft insurance, etc.; and

26 e. Users are at imminent risk of future harm from identity theft.



1 **EIGHTH CAUSE OF ACTION**

2 **Violation of California’s Online Privacy Protection Act,**

3 **Cal. Bus. & Prof. Code §§ 22575 et seq.**

4 73. Plaintiff, on behalf of himself and the Class, incorporates and re-alleges the  
5 preceding paragraphs of the complaint.

6 74. Yahoo is a commercial Web site or online service that collects personally  
7 identifiable information through the Internet about individual consumers residing in California  
8 who use or visit its commercial Web site or online service, within the meaning of California  
9 Business and Professions Code § 22575(a).

10 75. Yahoo failed to adhere to its posted privacy policy knowingly and willfully, with  
11 respect to the care it would take, and negligently and materially with respect to the extent of its  
12 disclosure of users’ data, in violation of id. § 22576.

13 76. This failure to adhere to its privacy policy caused injuries to Yahoo’s users as  
14 described herein.

15 **NINTH CAUSE OF ACTION**

16 **Declaratory Relief**

17 77. Plaintiff, on behalf of himself and the Class, incorporates and re-alleges the  
18 preceding paragraphs of the complaint.

19 78. In connection with the active case and controversy between Plaintiff and Yahoo,  
20 Plaintiff seeks declaratory relief pursuant to 28 U.S.C. § 2201, declaring that:

21 a. To the extent plaintiff’s claims for express or implied warranties are  
22 covered by Yahoo’s Terms of Service, the disclaimer of warranties contained in § 19.1 is  
23 unconscionable and unenforceable; and

24 b. To the extent plaintiff’s claims are covered by Yahoo’s Terms of Service,  
25 the limitation of liability in § 20 “resulting from . . . unauthorized access to . . . [users’] data” is  
26 unconscionable and unenforceable, or precluded by federal and state law as recognized in § 21.

1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiffs pray as follows:

3 1. That the Court determines that this action may be maintained as a Class action  
4 under Fed. R. Civ. P. 23, and that Plaintiff be named representative of the Class.

5 2. That Yahoo be adjudged to have breached the express terms of its contract with  
6 users contained in its Privacy Policy.

7 3. That Yahoo be adjudged to have breached the terms of its implied contract with  
8 users incorporating the Privacy Policy.

9 4. That Yahoo be adjudged liable as bailee for the harm to users' personally  
10 identifiable information.

11 5. That Yahoo be adjudged to have violated the implied covenant of good faith and  
12 fair dealing with respect to its contractual relationship with users.

13 6. That Yahoo be adjudged to have negligently caused harm to users' personal  
14 information, which was entrusted to its care.

15 7. That Yahoo be adjudged to have violated California's Unfair Competition Law.

16 8. That Yahoo be adjudged to have violated California's Consumer Legal Remedies  
17 Act.

18 9. That Yahoo be adjudged to have violated California's Online Privacy Protection  
19 Act.

20 10. That any contractual provision purporting to limit or preclude these liabilities be  
21 declared invalid.

22 11. That judgment be entered for Plaintiff and members of the Class against  
23 Defendants for damages and special damages, including any punitive damages allowed by law,  
24 together with the costs of this action, including reasonable attorneys' fees.

25 12. That Plaintiff and the Class be awarded pre-judgment and post-judgment interest at  
26 the highest legal rate from and after the date of service of this Complaint to the extent provided  
27 by law.

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

13. That Plaintiff and members of the Class have such other, further, or different relief, as the case may require and the Court may deem just and proper under the circumstances.

Dated: December 27, 2016

MARC M. SELTZER  
STEVEN G. SKLAVER  
SUSMAN GODFREY L.L.P.

By: /s/ Steven G. Sklaver  
Steven G. Sklaver  
Attorney for Plaintiff Aman Abye



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

**DEMAND FOR JURY TRIAL**

Plaintiff requests a jury trial on all matters so triable.

Dated: December 27, 2016

MARC M. SELTZER  
STEVEN G. SKLAVER  
SUSMAN GODFREY L.L.P.

By: */s/ Steven G. Sklaver*  
\_\_\_\_\_  
Steven G. Sklaver  
Attorneys for Plaintiff Aman Abye