



**IN THE COURT OF THE CHANCERY OF THE STATE OF DELAWARE**

In re Yahoo! Shareholders Litigation

Cons. C.A. No. 3561-CC

PUBLIC VERSION  
DATED: MAY 15, 2008

**FIRST AMENDED VERIFIED CONSOLIDATED COMPLAINT**

Plaintiffs Police & Fire Retirement System of the City of Detroit and General Retirement System of the City of Detroit (collectively "Plaintiffs"), by their undersigned counsel, on behalf of themselves and all other similarly situated public shareholders of Yahoo! Inc. (hereafter, "Yahoo" or the "Company"), bring the following First Amended Verified Consolidated Complaint ("Amended Complaint"). The allegations of this Amended Complaint are based on the personal knowledge of Plaintiffs as to themselves and on information and belief (including the investigation of counsel, review of publicly available information and conduct of discovery) as to all other matters.

**SUMMARY OF THE ACTION**

1. On January 31, 2008, Microsoft Corporation ("Microsoft") delivered to the Yahoo Board of Directors (the "Board") a merger proposal, offering to pay Yahoo shareholders \$31 in cash or Microsoft stock – a 62% premium over Yahoo's then-current market price. This high premium reflected Microsoft's express desire to complete a negotiated acquisition, to proceed with an orderly integration of the businesses and to combine forces to counter the growing near-monopolistic dominance of the internet search market by Google, Inc. ("Google").

2. Microsoft, which already had invested a year and a half privately courting Yahoo to accept a friendly deal, sent a written proposal to the Yahoo Board. Redacted

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3. The Board made no effort to protect Yahoo shareholders from the known threat that Yang's deep hostility toward Microsoft would undermine good faith negotiations with Microsoft and prevent an unbiased review of the offer and selection of any responses. To the contrary, the Board handed to Yang responsibility for direct negotiations with Microsoft. Apparently, none of Yahoo's independent directors attended the critical meetings between the two companies. Yang met with Microsoft seconded by co-founder David Filo, a senior officer referred to as the Company's "Chief Yahoo," but who does not serve on Yahoo's Board and who shares Yang's antipathy for Microsoft.

4. The Board also allowed Yang to determine the strategies employed by the Company in response to Microsoft's friendly overture. Yang used that power to delay, to refuse to negotiate in good faith, and to erect roadblocks. Yang also threatened to implement a plan that would render a Yahoo acquisition far less attractive, if not unfeasible, for Microsoft, and in the process abandon the cornerstone of Yahoo's pre-existing business strategy if Microsoft dared nominate a competing slate of directors.

5. Yang convinced the Board to adopt change-in-control employee severance plans that impose tremendous costs and risk for an acquirer, throwing sand in the gears of Microsoft's plans for a smooth integration. These highly unusual plans reward employees with rich benefits if they quit and claim a constructive termination in the aftermath of a change in control. [Redacted]

[Redacted]

6. Under cover of a poison pill, Yang spent three months looking for a deal with anyone other than Microsoft. [Redacted]

[Redacted]

7. During this same three-month period, Yang and the Board refused to engage in good-faith negotiations with Microsoft. It is a small wonder that *The New York Times* reported that on the way out of a meeting with Yang "one of Mr. Ballmer's lieutenants whispered, '*they are going to burn the furniture if we go hostile. They are going to destroy the place.*'"

8. On May 3, Ballmer met with Yang and Filo to discuss Microsoft's offer, which had been raised to \$33. No Yahoo outside director or financial advisor attended and the presence of co-founder Filo, a non-director who shared Yang's anti-Microsoft bias, sent a powerful message. Yang and Filo, who combined own less than 10% of Yahoo's shares, set Yahoo's selling price at \$37 per share, far above what Microsoft was willing to pay and what Yahoo's largest shareholders had advised Yahoo they were seeking. Yang and Filo made clear that Yahoo would abandon its core strategy by outsourcing part of its search functions to Google if Microsoft took its offer directly to Yahoo shareholders. Microsoft could not swallow a Google-encumbered Yahoo due to antitrust implications, and undoing a Google deal would require a proxy fight and protracted, disruptive, uncertain, multi-front litigation -- exactly what Microsoft needed to avoid if it was to accomplish a smooth integration.

9. Immediately after the May 3 meeting, Ballmer withdrew Microsoft's offer. Ballmer wrote in his withdrawal letter: "after giving this week's conversations further thought, it is clear to me that it is not sensible for Microsoft to take our offer directly to your shareholders. . . . Our discussions with you have led us to conclude that, in the interim, you would take steps that would make Yahoo! undesirable as an acquisition for Microsoft." Completely indifferent to shareholder interests and growing outrage, Yang and his loyalists reportedly celebrated with a round of "high fives."

10. Yang's defensive and self-interested conduct was grossly disproportionate to any threat arguably presented by Microsoft's proposal for a friendly merger. There was no question of Microsoft's ability to finance the transaction or its sincerity in seeking

a negotiated acquisition. Yahoo's poison pill precluded a hostile bid. While Microsoft could deal directly with Yahoo shareholders by exercising its right to nominate a director slate at Yahoo's next annual meeting, Microsoft preferred a deal supported by Yang and the Board to avoid a costly and disruptive proxy fight.

11. Moreover, Microsoft advised Yahoo it had earmarked \$1.5 billion for retention incentives, thus allaying any employee uncertainty concerns. Redacted

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12. Plaintiffs seek all available recourse for Yang's disloyalty and the Board's bad faith indulgence of Yang's conduct, which cost Yahoo shareholders the opportunity to realize a 72% premium over the unaffected market price.

#### **THE PARTIES**

##### **A. Plaintiffs**

13. Plaintiff Police & Fire Retirement System of the City of Detroit ("Detroit Police & Fire") is a public pension fund for the benefit of the active and retired police officers and firefighters of the City of Detroit, Michigan. Detroit Police & Fire is a shareholder of Yahoo, has been a shareholder of Yahoo at all material times alleged in this Complaint, and will continue to be a shareholder through its pendency.

14. Plaintiff General Retirement System of the City of Detroit ("Detroit General") is a public pension fund for the benefit of the active and retired public employees of the City of Detroit, Michigan. Detroit General is a shareholder of Yahoo,

has been a shareholder of Yahoo at all material times alleged in this Complaint, and will continue to be a shareholder through its pendency.

**B. The Director Defendants**

15. The Yahoo Board is characterized by lavish compensation and interlocking business relationships with Yahoo and with each other.

16. Defendant Roy J. Bostock has served on Yahoo's board since 2003 and became Non-Executive Chairman of the Board on January 31, 2008. Bostock received compensation worth almost \$650,000 for serving as a Yahoo director in fiscal 2006 and compensation worth \$499,264 in fiscal 2007. As Non-Executive Chairman he receives an additional annual cash fee of \$275,000.

17. Bostock is also Chairman of the Board of Northwest Airlines Corporation, having succeeded co-Yahoo-director Gary Wilson in 2007. Bostock and Wilson were roommates at Duke University, are both Trustees of Duke and members of the Board of Visitors of the Fuqua School of Business at Duke, and members of the Board of Directors of the NCAA Foundation. Bostock and Wilson also serve on the advisory board of NeoSpire Corporation, a managed hosting company co-founded by Wilson's son, Derek Wilson, and with which Yahoo has a relationship.

18. Defendant Ronald W. Burkle has served as a member of the Yahoo Board since November 2001. Burkle received compensation worth over \$588,000 in fiscal 2006 and \$482,046 in fiscal 2007 for serving as a Yahoo board member.

19. Defendant Eric Hippeau has served as a Yahoo director since January 1996. Hippeau received compensation worth about \$606,000 in fiscal 2006 and

\$496,674 in fiscal 2007 for serving as a Yahoo board member. Between May 2000 and October 2007, Hippeau made almost \$27 million by exercising Yahoo stock options and selling the related shares, according to data from Vickers. Hippeau has numerous business dealings with Yang and Yahoo. Hippeau is Managing Partner of Softbank Capital ("Softbank") which holds a substantial stake in Yahoo's lucrative Asian operations: Yahoo! Japan and the parent of Alibaba.com. Yang is on the board of Alibaba.com and Yahoo! Japan. Yang and Hippeau also served together on the board of Ziff-Davis, Inc., of which Hippeau served as CEO and board Chairman from 1993 until at least 2000. In connection with Softbank's investments, Hippeau also serves on the board of directors of several companies that have business relationships with Yahoo, including (a) PureVideo, a network of video websites; (b) Goodmail Systems, creator of a service for trusted e-mail delivery; and (c) Beliefnet, a web site devoted to spiritual beliefs.

20. Defendant Vyomesh Joshi served as a Yahoo director since July 2005. Joshi received compensation worth about \$600,000 for serving as a Yahoo board member in fiscal 2006 and \$520,000 in fiscal 2007. Joshi is Executive Vice President of Hewlett Packard Company, a company with which Yahoo has a long-standing business relationship.

21. Defendant Arthur H. Kern joined the Yahoo Board in January 1996, shortly before Yahoo became a publicly traded company. Kern received compensation of almost \$500,000 for the fiscal year 2007 and over \$600,000 for fiscal 2006 for serving as a Yahoo board member and committee chairman. Plaintiffs believe that most of Kern's

wealth and success is linked to his affiliation with Yang. Kern has made some \$113 million by exercising Yahoo stock options and then selling the related shares. In January 1996, Kern received an option to purchase 114,068 shares of Yahoo stock at an exercise price of \$1 per share (not adjusted for subsequent stock splits). In addition, he received options to purchase 40,000 Yahoo shares under the Company's 1996 Directors' Stock Option Plan, once again not adjusted for splits. On a split-adjusted basis, those grants translated to options to purchase 3.69 million shares with a strike price of about five cents per share.

22. Defendant Robert A. Kotick has been a director of Yahoo since March 2003. Kotick received compensation of \$492,774 for the fiscal year 2007 and over \$620,000 for 2006 for serving as a Yahoo board member. Kotick is Chairman and Chief Executive Officer of Activision, Inc., a company with which Yahoo does business.

23. Defendant Edward R. Kozel has been a member of the Yahoo Board since October 2000. Kozel received compensation of \$516,202 for the fiscal year 2007 and almost \$620,000 for the fiscal year 2006 for serving as a Yahoo board member. Kozel is Chief Executive Officer of Sky Ryder Inc., a company with which Yahoo does business. He is a non-employee director of two entities with which Yahoo does business: Network Appliance, Inc. and Reuters Group PLC. Yang and Kozel have been involved in multiple business ventures together for several years, and have served together on the boards of Cisco Corporation, American Internet Corp, Pipelinks Inc. and Combinet Inc. Yang and Kozel also both served in an executive capacity for Growth Networks Inc.



24. Defendant Gary L. Wilson has been a Yahoo Board member since November 2001. Wilson received compensation of over \$482,000 for the fiscal year 2007, and about \$588,000 for 2006 for serving as a Yahoo board member. Wilson has numerous ties to Defendant Bostock, as described above.

25. Defendant Mary Agnes Wilderotter was appointed a director by the Board on July 27, 2007. Wilderotter received compensation of \$205,832 for her less-than-half year of service during 2007 as a Yahoo board member.

26. Defendant Jerry Yang has served as a member of the Board and an officer of the Company since March 1995. He is a co-founder of the Company and Chief Executive Officer.

27. In the last several years, the non-employee Yahoo directors have received a significant amount of Yahoo stock options. Over 80% of the value of the Individual Defendants' compensation in fiscal 2006 and over 70% in fiscal 2007 were in the form of options. Each non-employee director received 50,000 Yahoo options with an exercise price of \$36.75 in May 2005, 15,000 options with an exercise price of \$32.92 in May 2006, and 15,000 options with an exercise price of \$27.05 in June 2007. If Yahoo had accepted Microsoft's \$33 per-share offer, the 2005 and 2006 option grants would be worthless, and the 2007 grant would be worth about \$90,000 per director. Similarly, the 100,000 options with a \$32.94 exercise price defendant Joshi received when he joined the Board in July 2005 would be worthless. As a result of their compensation from Yahoo, their affiliation with institutions with ties to Yahoo and/or Defendant Yang, and other factors, the non-employee directors are not independent and disinterested.

**B. Officer Defendant David Filo**

28. Defendant David Filo co-founded Yahoo in 1994, was a director until 1996 and has served as an officer since 1995. Filo, whose job title is "Chief Yahoo," reports directly to Yang and is involved in guiding Yahoo's vision, is involved in many key aspects of the business at a strategic and operational level. Yahoo describes him as "a stalwart of the Company's employee culture and morale." On information and belief, Filo consulted and conspired with Yang about how to maintain Yahoo's independence in the face of Microsoft's merger proposal.

**C. Non-Party Yahoo**

29. Non-party Yahoo is a Delaware corporation with corporate headquarters in Sunnyvale, California. Yahoo is a top global internet brand that operates leading on-line website and services including search and advertising. As of February 15, 2008, there were 1,337,165,049 shares of common stock outstanding, trading under the ticker symbol YHOO. Filo and Yang together hold less than 10% of Yahoo's outstanding stock.

**FACTUAL BACKGROUND**

**A. Microsoft's Initial Friendly Approaches Are Rebuffed**

30. Microsoft has attempted since mid-2006, to court Yahoo and its top executives to support a friendly transaction. Redacted

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31. Yahoo's reaction has been consistent, giving the back of the hand to Microsoft's efforts towards a consensual deal, [Redacted]

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**B. Yang and the Board Embrace Project Panama**

33. Perceived as losing ground to the industry's dominant player, Google, Yahoo spent 2007 in search of a strategy that would satisfy its increasingly restive investors. In early 2007, it launched Project Panama, which Yahoo touted as a new search advertising platform that would allow the Company to better compete with industry leader Google.

34. By mid-year, CEO Terry Semel was facing a shareholder revolt. Semel resigned on June 18, at which time Yang assumed the CEO position and day-to-day control. Yang promised action — a “100-day plan” to re-define Yahoo’s long-term strategy in a way that would allow it to adapt to brisk changes in consumer behavior on the Web and to counter Google. The reality was different. “He came on board, announced a 100-day strategic review and promised there would be no sacred cows,” said Mark Mahaney, a Citigroup analyst. “One hundred days went by, and no cows were slaughtered.”

35. During the fall of 2007, Yahoo announced, first internally and later externally, three “Big Bets” upon which Yang and his management team’s success would be judged:

[1] Making Yahoo the starting point for web users with the launch of new products, innovative new mobile offerings and premium partnerships with wireless and broadband providers;

[2] Making Yahoo a “must buy” for the most advertisers by integrating Yahoo acquisitions Right Media and Blue Lithium into Yahoo’s internally operating marketing system, improving targeting capabilities and expanding partnerships with publishers across the web; and

[3] Creating open and industry leading platforms, including social networking, that attracts new developers.

36. Yang described Yahoo’s Big Bets as “three big, multi-year strategic objectives that will be the core of everything we do at Yahoo for the next few years.”

**C. January 31, 2008: Microsoft Makes a Friendly \$31 Per Share Offer**

37. Shortly after 5:00 PM on January 31, 2008, Microsoft CEO Steve Ballmer emailed a letter to Yang and Bostock, offering to negotiate a \$31 per share acquisition of

Yahoo (the "January 31 Offer"). The January 31 Offer recounted Microsoft's prior efforts to acquire Yahoo and noted that Microsoft had given Yahoo time to implement business strategies to turn the Company around. The letter made explicit Microsoft's desire for a consensual transaction and a smooth integration:

Under our proposal, Microsoft would acquire all of the outstanding shares of Yahoo! common stock for per share consideration of \$31 based on Microsoft's closing share price on January 31, 2008, payable in the form of \$31 in cash or 0.9509 of a share of Microsoft common stock. Microsoft would provide each Yahoo! shareholder with the ability to choose whether to receive the consideration in cash or Microsoft common stock, subject to pro-rata so that in the aggregate one-half of the Yahoo! common shares will be exchanged for shares of Microsoft common stock and one-half of the Yahoo! common shares will be converted into the right to receive cash. *Our proposal is not subject to any financing condition.*

Our proposal represents a 62% premium above the closing price of Yahoo! common stock of \$19.18 on January 31, 2008. The implied premium for the operating assets of the company clearly is considerably greater when adjusted for the minority, non-controlled assets and cash....

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Microsoft's consistent belief has been that the combination of Microsoft and Yahoo! clearly represents the best way to deliver maximum value to our respective shareholders, as well as create a more efficient and competitive company that would provide greater value and service to our customers. In late 2006 and early 2007, we jointly explored a broad range of ways in which our two companies might work together. These discussions were based on a vision that the online businesses of Microsoft and Yahoo! should be aligned in some way to create a more effective competitor in the online marketplace.

In February 2007, I received a letter from your Chairman indicating the view of the Yahoo! Board that "now is not the right time from the perspective of our shareholders to enter into discussions regarding an acquisition transaction." According to that letter, the principal reason for this view was the Yahoo! Board's confidence in the "potential upside" if management successfully executed on a reformulated strategy based on certain operational initiatives, such as Project Panama, and a significant

organizational realignment. A year has gone by, and the competitive situation has not improved.

While online advertising growth continues, there are significant benefits of scale in advertising platform economics, in capital costs for search index build-out, and in research and development, making this a time of industry consolidation and convergence. *Today the market is increasingly dominated by one player who is consolidating its dominance through acquisition. Together, Microsoft and Yahoo! can offer a credible alternative for consumers, advertisers, and publishers.*

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*We would value the opportunity to further discuss with you how to optimize the integration of our respective businesses to create a leading global technology company with exceptional display and search advertising capabilities. You should also be aware that we intend to offer significant retention packages to your engineers, key leaders and employees across all disciplines.*

(Emphasis added)

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41. The January 31 Offer made clear that Microsoft sought a friendly deal to acquire all shares on equal terms. Indeed, given Yahoo's poison pill, Microsoft could not have closed a hostile deal. The offer was not contingent on outside financing, and in light of Microsoft's financial strength, there could be no serious concern about its ability to close. In addition, there could be no realistic concern that Microsoft was engaged in greenmail or had some other motive. Moreover, Microsoft's allocation of \$1.5 billion for employee retention demonstrated its desire to protect Yahoo's employees.

**D. Yang's Personal Interests and Animus Towards Microsoft Were The Greatest Risk Facing Yahoo's Shareholders**

42. The biggest threat to Yahoo and its shareholders was not from Microsoft's offer to negotiate a friendly deal. Rather, it was from the risk that Yang's hubris would lead him, co-founder Filo and their loyalists to thwart Microsoft's advances at shareholder expense.

43. Yang and Filo harbor strong emotional attachments to the Company. Yang and Filo created Yahoo in 1994 in a trailer at Stanford University, where they were graduate students. Initially, their site consisted of a list of recommended web pages and was called "Jerry's Guide to the World Wide Web." It was renamed "Yahoo!" as the site gained popularity. They took the company public in 1996. By 2007, Yahoo had more than 14,000 employees and revenues approaching \$7 billion.

44. Yang's ego drove him to strongly desire a future for Yahoo that could diverge from the best interests of shareholders – preserving independence from industry giant Microsoft. A former Yahoo executive quoted in an ABCNews.com article entitled "Yahoo CEO Hoping to Thwart Microsoft" described Yang as having always "envisioned building a company that would be around for 100 years, not just 14 years."

45. Yang also harbors a well-known antipathy for Microsoft. An article published by CNET News, entitled "No love lost from Jerry Yang when it comes to Microsoft," states:

Yahoo may indeed agree to Microsoft's \$44.6 billion bear hug, but it will be over Jerry Yang's dead body.

People familiar with Yahoo's chief executive say he "can't stand" Microsoft, which can't come as a big surprise considering the decade-long rivalry between the companies.

One former employee has been quoted as saying: "Jerry would rather give up his left pinky than see Microsoft wind up running this company."

46. According to the *New York Post*, at least some Board members were worried that "Yang and his loyalists . . . might act out of emotion rather than their fiduciary duty." That concern supposedly produced "friction on the board." The article



quotes one source observing that "The emotional part of Yang would rather do anything but sell to Microsoft...."

47. The Board had an obligation to ensure that Yahoo's response to Microsoft's bid was directed at achieving the best outcome for Yahoo's shareholders, irrespective of the proclivities of the Company's founders. Consequently, the Board was obligated to conduct a process insulated from Yang's ego. Further, the Board should have protected shareholders from the obvious threat that Yang would obstruct any Microsoft bid for Yahoo, regardless of fairness or the opportunity presented. The Board had ample warning about this obligation, as Plaintiffs' initial complaint in this action, filed February 21, 2008, exposed each Board member to personal liability for failing to restrain Yang from harming shareholders.

48. Nevertheless, the Board put Yang and Filo in control of the most critical steps in the process. As discussed in a *The Wall Street Journal* postmortem on May 6, the Board ignored Yang's and Filo's disabling personal agenda, allowing them to act like controlling shareholders in orchestrating Yahoo's response to Microsoft, as if the 1996 IPO never happened:

*One thing Yang can do is invite the right people into his negotiations with Microsoft. So far, he and co-founder David Filo have been running the negotiations themselves, largely ignoring the suggestions of investment bankers and shareholders alike. One person close to the deal said Yang hasn't invited members of the board to take part in some of the major discussions. Yang and Filo can't create a clique of two to decide the company's future — at some point, they have to trust the board, employees and shareholders too. If [Yahoo's two largest institutional investors] Cap Re and Bill Miller aren't taking their concerns to management before they take them to the public, that's a harsh statement about trust.*

(Emphasis added)

**E. Yang Obtains Immediate Board Approval of An  
Unprecedented Change-in-Control Employee Walkout Plan**

49. Yahoo knew Microsoft placed importance on the smooth integration and was interested in keeping much of the Yahoo workforce, as reflected in Ballmer's disclosure to Yang of the \$1.5 billion employee retention earmark. Viewing employee retention as Microsoft's Achilles' heel, Yang engineered an ingenious defense creating huge incentives for a massive employee walkout in the aftermath of a change in control. The plan gives each of Yahoo's 14,000 full-time employees the right to quit his or her job and pocket generous termination benefits at any time during the two years following a takeover, by claiming a "substantial adverse alteration" in job duties or responsibilities.

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Instead of protecting only employees actually fired by Microsoft, each Yahoo employee was given the right to quit and receive full acceleration of equity and large cash severance upon a voluntary termination “for good reason” after a change in control. “Good reason” for a voluntary termination rests on any “substantial adverse alteration” in the employee’s duties or responsibilities at any time during the two years following a change in control.

64. The “good reason” trigger places a powerful lever in the hands of employees, including those Microsoft has every intention to retain. The lucrative benefits afforded to a terminating employee would encourage thousands to leave – or threaten to leave – if they can make out a plausible claim of “substantial adverse alteration” – a term that has no precise technical or legal definition.

65. The risk is compounded by the fact that Yahoo’s thousands of engineers, known as “Technical Yahoos!,” have detailed job responsibilities and qualifications. As a consequence, Microsoft or any other acquirer conducting an integration would not only

be forced to pay severance benefits for employees it fired, the acquirer would also be saddled with:

- (1) paying severance benefits for employees who were redeployed;
- (2) paying benefits for employees whose jobs changed in some way found by a California court to be substantially adverse;
- (3) the productivity costs of a potentially mass, unwanted employee exodus;
- (4) friction and uncertainty as a result of potential disputes over the applicability of the plan; and
- (5) the cost of administering a plan covering over 13,000 employees.

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70. The Board approved the change-in-control severance plan in concept on February 8 and delegated to the Compensation Committee the authority to adopt the specific terms of the plans.

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Redacted Microsoft's goal was to incentivize key employees to stay with the company after a takeover. Only a small portion of the \$1.5 billion would be paid to terminated employees. Yahoo's plan compensates terminated employees and incentivizes others to quit.

72. The Compensation Committee met on the morning of February 12, 2008, at which time it approved the plan. Redacted

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75. The Yahoo Board completely disabled its own ability to amend or rescind its severance-related defensive measures so long as Microsoft's offer remained pending. Under the plans, no amendment or rescission of the plans can be made until thirty (30) days *after* the "Potential Change of Control" event – which Microsoft's offer clearly was – has been withdrawn or terminated.

76. In an April 5, 2008, letter, Microsoft's CEO criticized Yahoo's Board for adopting the severance plans, which he said "made any change of control more costly."

77. The Board's mishandling of the adoption of Yang's severance plans is both a standalone breach of fiduciary duty and is emblematic of the directors' general attitude towards the Microsoft offer – ceding authority to interested director Yang to thwart Microsoft's integration objectives.

**F. The Board Changes Its Bylaws to Buy Time To Thwart Microsoft**

78. Yahoo held its last annual meeting on June 12, 2007. Delaware law required Yahoo to hold an annual meeting within one year of that date. Under Yahoo's

pre-existing bylaws, shareholders had until March 14, 2008 to nominate directors to the Yahoo Board.

79. Seeking to delay a proxy challenge by Microsoft, and buy more time to hatch additional takeover defenses, Yahoo amended its by-laws on March 5 to extend the nomination deadline until 10 days after the announcement of the date of the annual meeting.

**G. The Board Opens its Doors to Anybody But Microsoft**

80. Yahoo's board formally rejected Microsoft's \$31 per share offer on February 11, 2008. While responding to Microsoft with a stiff arm, Yahoo opened its doors to discussions with any potential partner -- other than Microsoft.

81. On March 5, 2008, *The Wall Street Journal* reported Yahoo and Time Warner had stepped up talks over creating an alternative to Microsoft's unsolicited offer that would fold Time Warner's AOL Internet unit into Yahoo, with Time-Warner taking a sizable minority stake in the combined entity.

82. On April 10, 2008, Reuters reported Yahoo was nearing a deal with Time Warner to fold AOL (excluding AOL's legacy dial-up Internet access operations) into a combined company. Because Yahoo would have received cash from Time Warner in exchange for only 20 percent of the combined Yahoo-AOL, the transaction would not have required shareholder approval. *The Wall Street Journal* reported that Yahoo would use the cash and other funds to buy back several billion dollars worth of Yahoo stock at a price somewhere in the middle of the range between \$30 and \$40 a share.

83. Analysts remained unimpressed. UBS analyst Ben Schachter wrote: "In our view Yahoo management would have a difficult time convincing a majority of its shareholders this deal is worth more than Microsoft's offer." The UBS analyst also stated: "Even if shares were repurchased at \$35-plus a share, the shares likely would pull back once the buyback is done." *The Wall Street Journal* noted that an AOL deal could cause a shareholder revolt: "Yahoo has yet to commit to a deal with AOL and though talks between the two continue, Yahoo's board could risk a revolt by shareholders if it chose that path over a tie-up with Microsoft."

84. Yahoo also claims it engaged in discussions with News Corp. However, on March 10, 2008, News Corp. Chairman Rupert Murdoch said he was "not going to get into a fight with Microsoft, which has a lot more money than us." Far from challenging Microsoft, on April 10, 2008, *The New York Times* reported that News Corp. was talking with Microsoft about a joint bid for Yahoo.

85. Yahoo's Board also took its case for independence to the public. On March 18, 2008, Yahoo publicly issued a rosy investor presentation setting forth strategic initiatives and a three-year financial plan. Yahoo claimed it would almost double operating cash flow over the next three years from \$1.9 billion to \$3.7 billion and would generate \$8.8 billion in revenue, excluding traffic acquisition costs in 2010.

86. Even after being fully informed of Yahoo's optimistic outlook, investors remained focused on Microsoft's offer. On March 18, 2008, Sanford C. Bernstein & Co. analyst Jeffrey Lindsay characterized Yahoo's sales forecasts as "too bullish," because it was unlikely that "the steps outlined in the presentation will be able to achieve the

projected growth rates.” According to Lindsay, “[t]he best outcome for Yahoo shareholders is still to sell the Company to Microsoft.”

87. Stanford Group analyst Clayton Moran concluded “[w]e believe Yahoo!’s options are dwindling. Talks with other potential suitors have not panned out. Public comparable valuations have dropped. And, economic indicators more clearly point to a recession. As such, Yahoo!’s aggressive forecast may be its last attempt to negotiate publicly with Microsoft.”

#### **H. Microsoft Grows Frustrated and Issues a Deadline**

88. On April 5, 2008, Ballmer wrote to Yahoo’s Board of Directors, setting a three-week deadline for Yahoo to negotiate and reach a deal or face a proxy fight and possible reduction in Microsoft’s bid amount. In his letter, Ballmer complained that “While there has been some limited interaction between management of our two companies, there has been no meaningful negotiation to conclude an agreement.” Ballmer observed that while Yahoo was negotiating in search of alternatives, he had seen “no indication that you have authorized Yahoo! management to negotiate with Microsoft.” Instead, he wrote, Yahoo’s Board “adopted new plans ... that have made any change of control more costly.”

89. Ballmer warned that his patience was not endless. Absent “an agreement within the next three weeks, we will be compelled to take our case directly to your shareholders, including the initiation of a proxy contest to elect an alternative slate of directors for the Yahoo! board.” In such an event, “that action will have an undesirable

impact on the value of your company from our perspective which will be reflected in the terms of our proposal.”

90. On April 7, 2008, Yahoo’s Board once again rejected Microsoft, although it claimed Yahoo was open to a higher price.

**I. Yahoo Plays the Google Card**

91. As explained above, a critical part of Yahoo’s core long-term strategy before Microsoft’s offer has been the investment of huge resources into the development of improved search and search advertising capabilities in order to compete with the market leader, Google. As *The New York Times* recently observed, “before Microsoft made its offer, Mr. Yang and his team had repeatedly rejected the idea [of outsourcing to Google], saying search advertising was an essential part of the company’s long-term strategy. Instead, the company spent millions in improving its own search advertising system, called Panama, telling investors it was the right choice.”

92. Despite short-term revenue benefits, Yang concluded that outsourcing the business to Yahoo’s strongest competitor would undermine its ability to market its services as unique. Maintaining web-search-advertising as a company-controlled platform was a core assumption in the strategic initiatives Yahoo embraced after Yang’s first 100 days – an assumption Yang readily jettisoned to stop Microsoft.

93. Yang’s long-term strategy was wholly inconsistent with outsourcing search-advertising to Google. As explained by Yang during an analyst conference call announcing Yahoo’s fourth quarter 2007 earnings, the “formula for” becoming a “must buy” for advertisers – the second of the “big bets” – “is based on the strategic decision

we made last year to internally build the leading advertising network platform, supplemented by strategic acquisitions like Right Media and BlueLithium.” Yahoo could not be a “must buy” if advertisers are really buying from Google.

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According to *The New York Times*, on February 1, the day Microsoft’s offer became public, Google CEO Eric Schmidt called Yang and offered to help Yahoo fend off Microsoft. On April 9, consistent with its ABM (anyone but Microsoft) strategy, Yahoo effectively abandoned its long-term strategy, announcing that it had initiated a plan to test run Google’s search technology. According to a *New York Times* article (with emphasis added), “[o]n Wednesday, *Yahoo suggested that it might be willing to cede part of its core business to Google, an archrival, to remain independent.*”

96. *The New York Times* also reported that the Chair of the U.S. Senate Judiciary Committee’s Subcommittee on Antitrust, Competition Policy and Consumer rights, “warned about the potential anticompetitive implications.” On April 23, 2008, Reuters reported that the U.S. Justice Department was investigating the Google-Yahoo test:

The Justice Department is concerned the test may violate antitrust law, the source said, adding that authorities "have initiated an investigation" of it.

*The source, who spoke on condition of anonymity, said some of the government's concern focused on a telephone call from Google Chief Executive Eric Schmidt to Yahoo Chief Executive Jerry Yang to offer help in thwarting Microsoft's bid worth around \$44 billion.*

*The test was one of a series of efforts by Yahoo to fend off Microsoft's unwelcome bid.*

A second source said the Justice Department was concerned about a longer-term deal between Google and Yahoo, and had an initial inquiry underway into the matter.

(Emphasis added)

97. Yahoo's largest investors recognized the Google outsourcing deal as a desperate ploy. Bill Miller, the renowned Legg Mason fund manager who is Yahoo's second-largest investor, with 92 million shares as of April 2008, has been quoted as saying that outsourcing to Google "vitiates the Panama platform" and "would destroy the ecosystem of search."

98. The real effect of a Google-Yahoo deal, however, is to erect insurmountable obstacles to Microsoft's bid for Yahoo. Even if a Yahoo-Google deal passed antitrust muster, any arrangement among Microsoft, Yahoo and Google would be impossible and any effort to undo a Yahoo-Google deal would be uncertain, prolonged and highly disruptive.

**J. Microsoft Puts \$5 Billion More On the Table and Yang Goes Scorched Earth**

99. Yang and Filo did not negotiate with Microsoft in good faith. As described in an article published by the *Washington Post*:



Microsoft executives and bankers often sensed that Yahoo chief executive and co-founder Jerry Yang was never interested in reaching a deal.

The clearest indication came on April 15, 10 weeks into the process, during a meeting in Portland, Ore., a neutral site. Yahoo had argued that Microsoft's offer of \$31 a share, or \$44.6 billion, was too low.

So what price, the Microsoft negotiators asked, did Yahoo want?

"Yahoo said, 'We don't have a price,'" according to a source familiar with the negotiations. "Honestly, I think they just wanted the company to stay independent."

100. A person in the room at the time told *The New York Times* that on the way out of that April 15 meeting, one of Mr. Ballmer's lieutenants whispered, "*they are going to burn the furniture if we go hostile. They are going to destroy the place.*"

101. On April 26, 2008, Microsoft's deadline for Yahoo to accept its original offer expired. Microsoft persisted in seeking a friendly deal, raising its offer. On April 30, Ballmer informed Yang he thought he could come up with "a couple more dollars."

102. On May 1, Ballmer informed Yang that he was "formally offering a couple dollars more." The next day, Microsoft's general counsel Brad Smith called Ronald Olson, outside counsel for the Yahoo Board, to confirm that Microsoft was increasing its offer by \$5 billion, to \$33 per share. This represented a \$47.5 billion offer for Yahoo, and was a 72% premium to Yahoo's closing price of \$19.18 per share on January 31, 2008, the day before Microsoft offered to acquire the Company.

103. On May 3, Yang and Filo met with Ballmer and Kevin Johnson, Microsoft's head of online operations, at a Seattle airport. As the Associated Press reported on May 7, "Filo's presence at this pivotal meeting has puzzled some investors and analysts because he isn't on the company's board." In response to Microsoft's \$33

per share offer, Yang and Filo stated their shared view that Yahoo was worth \$38 per share but said they would support the board's desire for \$37 per share. There has been no evidence or indication that any independent financial advisor opined that a price below \$37 per share would be inadequate or unfair, or that it would have been improper to allow Yahoo shareholders the opportunity to weigh Microsoft's \$33 per share offer.

104. Yang's demanded \$37 price was unacceptable to Microsoft, and Microsoft had no effective recourse. Yang's actions leading up to and during the May 3 meeting made clear to Ballmer that Yang was prepared to respond to any attempt to deal directly with the Company's shareholders by pursuing interim measures that would make Yahoo undesirable to Microsoft (such as a Yahoo-Google outsourcing tie-up). Yang's threats to alter Yahoo's business to Microsoft's detriment left any Yahoo acquisition by means of a proxy fight, coupled with protracted litigation, impracticable both as a regulatory matter and in terms of implementing the smooth integration essential to the acquisition's success.

105. After the May 3 meeting failed to result in a deal, Ballmer sent a letter to Yang withdrawing Microsoft's offer. In this letter Ballmer states flatly that Yahoo's threat to outsource search to Google was the principal reason deterring Microsoft from pursuing a "hostile" bid for Yahoo:

Dear Jerry:

After over three months, we have reached the conclusion of the process regarding a possible combination of Microsoft and Yahoo!.

\* \* \*

I am disappointed that Yahoo! has not moved towards accepting our offer. I first called you with our offer on January 31 because I believed that a combination of our two companies would have created real value for our respective shareholders and would have provided consumers, publishers, and advertisers with greater innovation and choice in the marketplace. Our decision to offer a 62 percent premium at that time reflected the strength of these convictions.

In our conversations this week, we conveyed our willingness to raise our offer to \$33.00 per share, reflecting again our belief in this collective opportunity. This increase would have added approximately another \$5 billion of value to your shareholders, compared to the current value of our initial offer. It also would have reflected a premium of over 70 percent compared to the price at which your stock closed on January 31. Yet it has proven insufficient, as your final position insisted on Microsoft paying yet another \$5 billion or more, or at least another \$4 per share above our \$33.00 offer.

*Also, after giving this week's conversations further thought, it is clear to me that it is not sensible for Microsoft to take our offer directly to your shareholders. This approach would necessarily involve a protracted proxy contest and eventually an exchange offer. Our discussions with you have led us to conclude that, in the interim, you would take steps that would make Yahoo! undesirable as an acquisition for Microsoft.*

*We regard with particular concern your apparent planning to respond to a "hostile" bid by pursuing a new arrangement that would involve or lead to the outsourcing to Google of key paid Internet search terms offered by Yahoo! today. In our view, such an arrangement with the dominant search provider would make an acquisition of Yahoo! undesirable to us for a number of reasons:*

\* First, it would fundamentally undermine Yahoo!'s own strategy and long-term viability by encouraging advertisers to use Google as opposed to your Panama paid search system. This would also fragment your search advertising and display advertising strategies and the ecosystem surrounding them. This would undermine the reliance on your display advertising business to fuel future growth.

\* Given this, it would impair Yahoo's ability to retain the talented engineers working on advertising systems that are important to our interest in a combination of our companies.

\* In addition, it would raise a host of regulatory and legal problems that no acquirer, including Microsoft, would want to inherit. Among other things, this would consolidate market share with the already-dominant paid search provider in a manner that would reduce competition and choice in the marketplace.

\* This would also effectively enable Google to set the prices for key search terms on both their and your search platforms and, in the process, raise prices charged to advertisers on Yahoo. In addition to whatever resulting legal problems, this seems unwise from a business perspective unless in fact one simply wishes to use this as a vehicle to exit the paid search business in favor of Google.

\* It could foreclose any chance of a combination with any other search provider that is not already relying on Google's search services.

*Accordingly, your apparent plan to pursue such an arrangement in the event of a proxy contest or exchange offer leads me to the firm decision not to pursue such a path. Instead, I hereby formally withdraw Microsoft's proposal to acquire Yahoo!*

\* \* \*

I still believe even today that our offer remains the only alternative put forward that provides your stockholders full and fair value for their shares. By failing to reach an agreement with us, you and your stockholders have left significant value on the table.

(Emphasis added)

**K. High Fives From Yang, Thumbs Down From the Market**

106. Far from lamenting the shareholders' loss of an opportunity to sell their shares at a 72% premium, *The New York Times* website reported that "Yang and his team, who told Microsoft they would not sell for less than \$37 a share, greeted Microsoft's decision as a victory. *High-fives were exchanged Saturday afternoon when they learned Microsoft was backing down.*" (Emphasis added) In Yahoo's initial public statement

about the withdrawal of Microsoft's offer, Yang dismissed the whole affair as a "distraction."

107. The market saw things differently. Following Microsoft's withdrawal of its offer, at the opening of trading on May 5, Yahoo's stock price immediately dropped about 20 percent, ultimately closing down \$4.30 per share (15%) at \$24.37, some 26% less than Microsoft's \$33 per share offer to acquire the Company.

108. The Board claimed to have had shareholder support for rejecting Microsoft's bids. Apart from Yang and Filo, it is not apparent to whom they are referring. Gordon Crawford of the Capital Research Group, Yahoo's largest shareholder, owning about 16% of Yahoo's shares through funds he manages, and one of the country's most respected media investors, told *The Wall Street Journal* and other sources that he is "extremely disappointed" by Yang's performance and is "even more disappointed in the independent directors who were not responsive to the needs of independent shareholders."

109. Similarly, on May 5, 2008, *The New York Times* reported that Legg Mason's Bill Miller, who, through the funds he manages, is Yahoo's second-largest shareholder, stated: "[p]ress reports that major shareholders would have been willing to take \$35 are probably not far off the mark." (Emphasis added.) Both Miller and Crawford stated that \$34 to \$35 would have been acceptable, and informed Yahoo about their views on their target price in advance of Yang's \$37 per share demand.

110. On May 5, 2008, *The Wall Street Journal* reported that "[t]he analyst community" was lowering price targets for Yahoo stock, and some had "downgraded

shares entirely.” One analyst explained a Yahoo downgrade as follows: “In our view, companies that ignore the best interests of shareholder in favor of the interests of other stakeholders (particularly management) deserve to (and typically do) trade at a significant discount to peers.”

111. According to a May 3 Bloomberg Report, another analyst called Yang’s conduct: “Unbelievable. This is management putting its employees and its job security ahead of current Yahoo shareholders’ interest.”

112. Similarly, despite the lip service Yang has given to employee retention, one Yahoo executive anonymously told *The New York Times*, “If the stock drops as far as I think it will, a lot of employees are going to be angry and many key employees could leave.” The absence of a merger with Microsoft is thus likely to lead to defections of key Yahoo employees, as well, furthering the damage to shareholder value.

113. A May 7 op-ed in *The Wall Street Journal* identified Yang’s personal agenda and his conduct vis-à-vis Microsoft’s offer as the reason why no deal was struck:

In a fashion, [Yang] outsmarted not only Mr. Ballmer but his own Yahoo shareholders and board. Having discovered how much Yahoo was worth to Redmond (and no one else), he set about destroying that unique value by ceding Yahoo’s position in search to Google through an outsourcing deal.

*All this so Jerry Yang can fulfill his dream of having an independent Yahoo whose halls he can continue to walk as the revered “founder.”*

(Emphasis added)

**L. With Microsoft Gone, Yahoo Rushes to Schedule the Annual Meeting To Minimize Shareholder Time to Remove the Board**

114. With Microsoft gone from the scene and shareholders openly criticizing the Board's handling of the process, the Board put the March 5 bylaw amendment to immediate use. On May 5, 2008, the Board scheduled the 2008 Yahoo Annual Meeting for July 3, 2008, thus triggering the 10-day deadline for assembling an alternate slate. Yahoo thus took advantage of the fact that until Microsoft dropped its bid on May 3, no other shareholders had reason to begin assembling a potential slate.

**CLASS ACTION ALLEGATIONS**

115. Plaintiffs bring this action pursuant to Rule 23 of the Rules of the Court of Chancery, individually and on behalf of all other holders of Yahoo common stock (except defendants herein and any persons, firm, trust, corporation or other entity related to or affiliated with them and their successors in interest) who have sustained damages as a result of the Defendants' conduct complained of herein and who are or will be threatened with injury arising from defendants' wrongful actions, as more fully described herein (the "Class").

116. This action is properly maintainable as a class action.

117. The Class is so numerous that joinder of all members is impracticable. The number of shares of common stock of Yahoo outstanding as of December 31, 2007, Yahoo's most recent quarterly filing, was 1.339 billion. Plaintiffs believe there are thousands, if not hundreds of thousands, of beneficial holders of Yahoo stock, including investors spread around the world.

118. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The expense and burden of individual litigation make it impracticable for Class members individually to seek redress for the wrongful conduct alleged herein.

119. There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual class member. The common questions include, *inter alia*, the following:

- a. Whether Defendants have fulfilled, and are capable of fulfilling, their fiduciary duties to Plaintiffs and the other members of the Class, including their duties of loyalty, due care, and candor;
- b. Whether Defendants have engaged and are engaging in self-dealing in connection with the offers from Microsoft for an acquisition transaction;
- c. Whether the refusal by Defendants to consider and negotiate in good faith regarding the offers by Microsoft to acquire Yahoo is entirely fair to the members of the Class;
- d. Whether defensive measures, including a poison pill, the adoption of severance plans applicable to all Yahoo employees, and the outsourcing of valuable search business to Yahoo's main competitor, Google, implemented by Defendants and designed to make an acquisition transaction more difficult or costly for a potential acquirer are reasonable under the circumstances and/or fair to members of the Class;
- e. Whether Plaintiffs and the other members of the Class would be irreparably damaged if the Defendants are not (1) compelled to redeem the poison pill and to revoke and/or rescind the severance plans covering all Yahoo employees as described further herein, and (2) enjoined from taking other unreasonable actions that are disproportionate to any cognizable threat that may be posed; and
- f. Whether the members of the Class have sustained damages as a result of the conduct complained of herein, and if so, the proper measure of damages.



120. Plaintiffs anticipate that there will be no difficulty in the management of this litigation as a class action.

121. The Defendants have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole. To the extent Defendants continue to maintain and/or adopt defensive measures to make an acquisition more difficult or costly to Microsoft or any other potential acquirer, preliminary and final injunctive relief on behalf of the Class as a whole will be entirely appropriate.

122. Plaintiffs are committed to prosecuting this action and have retained competent counsel experienced in litigation of this nature. Plaintiffs' claims are typical of the claims of the other members of the Class and Plaintiffs have the same interests as the other members of the Class. Accordingly, Plaintiffs are an adequate representative of the Class and will fairly and adequately protect the interests of the Class.

123. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for defendants, or adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

## **CLAIMS FOR RELIEF**

### **COUNT I**

**(Breach of Fiduciary Duty Against Yang and Filo)**

124. Plaintiffs reallege each and every allegation above as if set forth in full herein.

125. Yang and Filo owe the Class the utmost fiduciary duties of due care and loyalty. Due to their personal interests in maintaining Yahoo's independence and their strong antipathy towards Microsoft, Yang and Filo failed to consider and respond in good faith to the acquisition offers by Microsoft to the detriment of Yahoo and its shareholders.

126. In addition, Yang and Filo used the threat of pursuing measures that make Yahoo an unattractive acquisition target, including the prospect of Yahoo abandoning its long-term business strategy in favor of a tie-up with Google that would make a Microsoft acquisition a regulatory and litigation quagmire, as an improper means to thwart Microsoft's advances.

127. As a result of the foregoing, Yang and Filo breached their fiduciary duties to Yahoo and its shareholders, including the obligations of loyalty and due care, causing harm to Plaintiffs and the Class.

128. Plaintiffs and the Class have no adequate remedy at law.

**COUNT II**

**(Breach of Fiduciary Duty Against  
All Defendants Other Than Yang and Filo)**

129. Plaintiffs reallege each and every allegation above as if set forth in full herein.

130. The Yahoo Directors owe the Class the utmost fiduciary duties of due care and loyalty. Encompassed in their duties is the duty to protect Yahoo and its shareholders from cognizable threats that are reasonably perceived, and to take reasonable measures to protect Yahoo and its shareholders from such threats.

131. Yang's and Filo's personal interests in maintaining Yahoo's independence and their strong antipathy towards Microsoft constituted a legally cognizable threat to Yahoo and its shareholders. The Yahoo Directors failed to take proper and reasonable steps to ensure that Yang and Filo would not act on their self-interest to thwart Microsoft's unsolicited acquisition proposal to the harm and detriment of Yahoo's shareholders.

132. In particular, the Yahoo Directors allowed Yang and Filo to negotiate directly with Ballmer without the presence of any disinterested director or independent financial advisors. As a result, Yang and Filo were able to demand a price above Microsoft's \$33 per share offer without determining appropriately, including through an outside financial advisor's "inadequacy opinion," whether the \$33 offer could reasonably be presented to Yahoo shareholders for their consideration.

133. Further, Yang and Filo were able to use the threat of pursuing measures that make Yahoo an unattractive acquisition target, including the prospect of Yahoo abandoning its long-term business strategy in favor of a tie-up with Google that would make a Microsoft acquisition a regulatory and litigation quagmire, as an improper means to thwart Microsoft's advances.

134. The Board acted disproportionately in delaying and refusing to negotiate in good faith with Microsoft, even though Microsoft's offer presented a negligible, if any, threat to Yahoo and its shareholders.

135. As a result of the foregoing, the Yahoo Directors have breached their fiduciary duties to Yahoo and its shareholders, including the obligations of loyalty, good faith, fair dealing, and due care, causing harm to Plaintiffs and the Class.

136. Plaintiffs and the Class have no adequate remedy at law.

**COUNT III**  
**(Breach of Fiduciary Duty Against All Defendants)**

137. Plaintiffs reallege each and every allegation above as if set forth in full herein.

138. The Yahoo Directors owe the Class the utmost fiduciary duties of due care and loyalty. To the extent the Board was aware of and authorized the conduct of Yang and Filo, such authorization was a disproportionate and preclusive response to Microsoft's offer that effectively prevented it from exercising its rights to nominate a slate of directors and to pursue a premium merger proposal. Such conduct includes, but is not limited to, authorizing Yahoo to contract with Google to test outsourcing of web search and advertising functions and authorizing Yang and Filo to threaten Microsoft with the prospect of a long-term outsourcing contract with Google.

139. The Yahoo Directors also have a duty not to adopt, implement or maintain any defensive measures, such as the Severance Plans or the poison pill, designed to make the acquisition of Yahoo unduly burdensome or expensive for a potential suitor. They

are obligated to refrain from entering into any agreements that would either harm the Company or its shareholders or inhibit their ability to maximize shareholder value.

140. Given the substantial premium offered by Microsoft, its unquestioned desire and ability to consummate a transaction on the terms proposed, and its own willingness to allocate significant sums to assure the retention of employees following a transaction with Yahoo, Microsoft's proposal provided no (or, at most, negligible) cognizable threat to Yahoo or its shareholders.

141. The Board's adoption of the change-in-control severance plans constitutes an unreasonable and disproportionate defensive measure in breach of their fiduciary duties. The Board was not adequately advised of alternative measures that would serve any legitimate corporate purpose and allowed Yahoo's self-interested management to structure the plans so as to maximize the burden on Microsoft rather than provide value to Yahoo and its shareholders.

142. The plans, [Redacted]

[Redacted]

[Redacted] represent an unduly expensive and unlawful transfer of wealth in any sale of control. In order to account for the plans, Microsoft would have reserved from any offer the potential cost of employee severance. [Redacted]

[Redacted]

143. The Board also abdicated its ability to amend or redeem the severance plans while Microsoft's offer remained pending, itself a violation of their fiduciary

duties, as any friendly negotiated transaction could have accounted for any legitimate employee-related concerns while avoiding the cost, structural and integration harm that the severance plans imposed on Microsoft in any deal. Moreover, to date, the Board has not indicated any intent or willingness to redeem the plans at the end of the thirty (30) day period following Microsoft's May 3 withdrawal of its offer, which would be permitted by the text of the plans.

144. As a result of the foregoing, the Defendants have breached their fiduciary duties to Yahoo and its shareholders, including the obligations of loyalty and due care, causing harm to Plaintiffs and the Class.

145. Plaintiffs and the Class have no adequate remedy at law.

#### **RELIEF REQUESTED**

**WHEREFORE**, Plaintiffs demand judgment as follows:

- (a) Declaring this action properly maintainable as a class action;
- (b) Declaring that the Defendants' conduct in refusing to consider and respond in good faith to offers to acquire Yahoo was in breach of their fiduciary duties of loyalty and due care;
- (c) Preliminarily and permanently enjoining Defendants from entering into any contractual agreements that inhibit their ability to maximize shareholder value;
- (d) Preliminarily and permanently enjoining Defendants from initiating any defensive measures which may effectively preclude the acquisition of the Company or are unreasonable and disproportionate to any cognizable threat posed by such potential acquirer;

(e) Ordering Defendants to rescind or redeem the poison pill and/or declaring the poison pill invalid;

(f) Invalidating the Severance Plans and/or ordering Defendants to redeem the severance plans immediately upon the expiration of the thirty (30) day period following Microsoft's May 3 withdrawal of its offer;

(g) Awarding compensatory damages in favor of Plaintiffs and the other members of the Class against all Defendants for all damages sustained as a result of Defendants' violations in an amount to be proven at trial, together with interest thereon;

(h) Awarding Plaintiffs the costs and disbursements of this action, including attorneys', accountants', and experts' fees; and

(i) Awarding such other and further relief as is just and equitable.

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Dated: May 12, 2008

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Transaction ID 19855845  
Case No. 3561-CC



# EXHIBIT A



**REDACTED IN ITS ENTIRETY**

## **EXHIBIT B**

**REDACTED IN ITS ENTIRETY**

# **EXHIBIT C**

**REDACTED IN ITS ENTIRETY**

## **EXHIBIT D**

**REDACTED IN ITS ENTIRETY**

# **EXHIBIT E**



**REDACTED IN ITS ENTIRETY**

# EXHIBIT F

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**REDACTED IN ITS ENTIRETY**

# TAB 2

**REDACTED IN ITS ENTIRETY**



**CERTIFICATE OF SERVICE**

I, Edward B. Micheletti, hereby certify that I caused to be served the Public Version of the First Amended Verified Consolidated Complaint that was filed on May 12 , 2008 and Public Version of Exhibits thereto on this 15<sup>th</sup> day of May, 2008 upon:

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