

1 Daniel C. Girard (SBN 114826)
2 Jordan Elias (SBN 228731)
3 **GIRARD GIBBS LLP**
4 601 California Street, 14th Floor
5 San Francisco, CA 94108
6 Telephone: (415) 981-4800
7 Facsimile: (415) 981-4846
8 *dgc@girardgibbs.com*

9 Laurence D. King (SBN 206423)
10 **KAPLAN FOX & KILSHEIMER LLP**
11 350 Sansome Street, Suite 400
12 San Francisco, CA 94104
13 Telephone: (415) 772-4700
14 Facsimile: (415) 772-4707
15 *lking@kaplanfox.com*

Frederic S. Fox (admitted *pro hac vice*)
David A. Straite (admitted *pro hac vice*)
KAPLAN FOX & KILSHEIMER LLP
850 Third Ave., 14th Floor
New York, NY 10022
Telephone: (212) 687-1980
Facsimile: (212) 687-7714
dstraite@kaplanfox.com

16 *Co-Lead Class Counsel*

17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19 **SAN JOSE DIVISION**

20 IN RE: YAHOO MAIL LITIGATION

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

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR SANCTIONS ON OBJECTOR
PATRICK S. SWEENEY; MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT**

Fed. R. Civ. P. 11; L.R. 3-9 and 7-8

Date: December 22, 2016
Time: 1:30PM
Location: Courtroom 8
280 South 1st Street
San Jose, CA 95113

1 **NOTICE OF MOTION AND MOTION**

2 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

3 PLEASE TAKE NOTICE that by this motion, and at the time and place designated above,
4 Plaintiffs Cody Baker, Brian Pincus, Rebecca Abrams, and Halima Nobles (“Plaintiffs”) will and hereby
5 do move for an order of sanctions on Patrick S. Sweeney, Esq. (“Sweeney”) pursuant to Federal Rule of
6 Civil Procedure 11(c).

7 Plaintiffs file this motion because Mr. Sweeney made a baseless objection to the settlement of
8 this action without a reasonable and competent inquiry and for an improper purpose. As a result of
9 efforts to build a record for the Court to evaluate the improper objection, Plaintiffs (through Class
10 Counsel) incurred \$69,019 in additional attorneys’ fees and \$6,617.84 in additional unreimbursed
11 expenses. The motion is based on this Notice of Motion and Motion, the supporting Memorandum, the
12 argument of counsel, the transcript of the deposition of Sweeney dated August 5, 2016, and all other
13 papers and records on file in this matter. The motion is also supported by the accompanying declaration
14 of Laurence D. King (the “King Declaration”).

15 Dated: September 29, 2016

Respectfully Submitted,

16 **KAPLAN FOX & KILSHEIMER LLP**

17 **GIRARD GIBBS LLP**

18 By: /s/ Laurence D. King
19 Laurence D. King (SBN 206423)
20 350 Sansome Street, Suite 400
21 San Francisco, CA 94104
22 Telephone: (415) 772-4700
23 Facsimile: (415) 772-4707
24 *lking@kaplanfox.com*

By: /s/ Daniel C. Girard
Daniel C. Girard (SBN 114826)
Jordan Elias (SBN 228731)
601 California Street, 14th Floor
San Francisco, CA 94108
Telephone: (415) 981-4800
Facsimile: (415) 981-4846
dgc@girardgibbs.com

23 Frederic S. Fox (admitted *pro hac vice*)
24 David A. Straite (admitted *pro hac vice*)
25 850 Third Ave., 14th Floor
26 New York, NY 10022
27 Telephone: (212) 687-1980
28 Facsimile: (212) 687-7714
dstraite@kaplanfox.com

Co-Lead Class Counsel

Co-Lead Class Counsel

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs respectfully move for an order of sanctions on serial *pro se* objector Patrick S.
4 Sweeney, Esq. in connection with his July 14, 2016 objection to the settlement of this action (the
5 “Sweeney Objection,” ECF No. 194). The baseless Sweeney Objection was filed without a reasonable
6 and competent inquiry and was made for an improper purpose. In order to build a record for the Court
7 to evaluate the improper objection, Plaintiffs (through Class Counsel) were forced to incur \$69,019 in
8 additional attorneys’ fees and \$6,617.84 in additional unreimbursed expenses. *See* Statement Regarding
9 Lodestar and Fees Pursuant to Order of August 14, 2016, ECF No. 201. This motion is accompanied by
10 the declaration of Laurence D. King (the “King Declaration”). Consistent with Federal Rule of Civil
11 Procedure 11(c)(2), Plaintiffs served Mr. Sweeney with this motion at least 21 days before it was filed.
12 *See* King Decl. ¶¶ 4-5.

13 **II. RELEVANT BACKGROUND**

14 **A. Settlement Proceedings in This Court**

15 After the close of expert and fact discovery, and after briefing on cross-motions for summary
16 judgment was completed, the parties reached an agreement to settle this litigation on January 7, 2016.
17 Plaintiffs moved for preliminary approval on the same day. ECF No. 174. The Court held a
18 Preliminary Approval Hearing on March 10, 2016. At the Court’s direction, the parties filed an
19 addendum to the settlement agreement on March 15, 2016 to streamline procedures for objections.
20 Upon receipt of the addendum, the Court granted preliminary approval of the settlement (the
21 “Preliminary Approval Order,” ECF No. 182) and re-certified two classes, a California Invasion of
22 Privacy Act class and a Stored Communications Act class. *Id.* ¶ 9. The objection deadline was July 1,
23 2016, *see id.* ¶ 9, and the final approval hearing was held on August 25, 2016 at 1:30 p.m. The Court
24 granted final approval of the settlement and overruled the Sweeney Objection. *In re: Yahoo Mail Litig.*,
25 2016 WL 4474612, at *7 (N.D. Cal. Aug. 25, 2016) (“The information obtained from the discovery,
26 along with the record in this case, demonstrate that Sweeney’s objection lacks merit.”).

1 **B. The Sweeney Objection and Mr. Sweeney’s History of Improper Objections**

2 The Sweeney Objection was the only objection to the settlement. Mr. Sweeney did not oppose
3 the substance of the settlement, and only objected to the claims administration process and Plaintiffs’
4 request for attorneys’ fees. On July 22, 2016, Class Counsel moved for leave to conduct expedited
5 discovery of Mr. Sweeney, including taking his deposition (ECF No. 195), which the Court granted on
6 July 25, 2016, (ECF No. 196). Class Counsel deposed Mr. Sweeney in his home state of Wisconsin,
7 which was Mr. Sweeney’s first deposition in his capacity as an objector to a class settlement. *See*
8 Transcript of Deposition of Patrick S. Sweeney dated August 5, 2016 (“Tr.”) 12:23-25, ECF No. 197-2.

9 Discovery and Class Counsel’s research confirmed in starkest terms that Sweeney is a bad-faith
10 serial objector—either in his own capacity, as counsel, or as ghost-writer for other objectors. *See In re:*
11 *Yahoo Mail Litig.*, 2016 WL 4474612, at *8. By 2014, numerous courts had already identified Mr.
12 Sweeney as a serial objector. *See, e.g., Larson v. Trader Joe’s Co.*, No. 11-cv-05188-WHO, 2014 WL
13 3404531, at *6-7 (N.D. Cal. July 11, 2014) (noting Mr. Sweeney’s “long history of representing
14 objectors”); *Roberts v. Electrolux Home Prods., Inc.*, No. SACV12-1644-CAS (VBKx), 2014 WL
15 4568632, at *12-15 (C.D. Cal. Sept. 11, 2014) (recognizing Mr. Sweeney as a lawyer “who routinely
16 files objections to class settlements”). Since 2014, Sweeney has filed at least 20 additional objections.
17 *See Plaintiffs’ Response to Objection to Class Settlement (“Response to Objection”), Attachment A*
18 *(listing objections)*, ECF No. 197. And his pace of objections is now “accelerating.” Tr. 148:22-149:12.
19 Mr. Sweeney is literally a professional objector—he considers his objections as part of a business. Tr.
20 149:13-22.

21 Review of other cases, and by Mr. Sweeney’s own admission, confirm that the Sweeney
22 Objection is based on a standard boilerplate “form” that Mr. Sweeney uses in all his objections. Tr.
23 106:9-15; *see also In re Polyurethane Foam Antitrust Litig.*, No. 10-2196, 2016 WL 1452005, at *3
24 (N.D. Ohio Apr. 13, 2016) (finding Mr. Sweeney’s “objections amount to pure boilerplate language,
25 wholly untethered from the actual terms of the settlement”); *In re TRS Recovery Servs., Inc. &*
26 *Telecheck Servs., Inc., Fair Debt Collection Practices Act (FDCPA) Litig.*, No. 13-2426, 2016 WL
27 543137, at *6 n.16 (D. Me. Feb. 10, 2016) (“[Mr. Sweeney’s] listed objections are without merit and
28 appear to be a form document . . . that he has filed in other class action settlements.”).

1 **III. LEGAL STANDARD**

2 Federal Rule of Civil Procedure 11 applies to *pro se* filings to the same extent as filings made by
3 represented parties. *See* Fed. R. Civ. P. 11(a) (every paper filed with the Court “must be signed . . . by a
4 party personally if the party is unrepresented”); *see also* L.R. 3-9 (person proceeding *pro se* “is bound
5 by the Federal Rules as well as by all applicable local rules”). Rule 11(b) provides that by presenting
6 any paper to the court, the filer “certifies to the best of the person’s knowledge, information and belief,
7 formed after an inquiry reasonable under the circumstances” that the document is not being filed for an
8 improper purpose and is not frivolous. A violation of Rule 11(b) can subject the filer to sanctions under
9 11(c). In the Ninth Circuit, Rule 11(c) sanctions are appropriate if either test of improper purpose or
10 frivolousness is met. *Truesdell v. S. Cal. Permanente Med. Grp.*, 293 F.3d 1146, 1153 (9th Cir. 2002)
11 (“Rule 11(c) allows sanctions if a filing suffers from *either* of those defects.”). A filing is frivolous if it
12 “is both baseless and made without a reasonable and competent inquiry.” *Townsend v. Holman*
13 *Consulting Corp.*, 929 F.2d 1358, 1362 (9th Cir. 1990) (affirming sanctions imposed on plaintiff for
14 frivolous filing of amended complaint without any reasonable inquiry). Finally, the goal of Rule 11 is to
15 deter baseless or otherwise improper filings, regardless of whether the filing resulted in any significant
16 delay of the proceedings. *Christian v. Mattel, Inc.*, 286 F.3d 1118, 1127 (9th Cir. 2002).

17 **IV. THE SWEENEY OBJECTION WARRANTS SANCTIONS**

18 *A. The Sweeney Objection Was Filed Without Reasonable and Competent Inquiry*

19 1. Mr. Sweeney Failed to Provide any Evidence of Standing

20 “Formal objections may only be made by class members.” *In re: Cathode Ray Tube (CRT)*
21 *Antitrust Litig.*, No. 07-cv-5944-JST, 2016 WL 3648478, at *23 (N.D. Cal. July 7, 2016) (citing *In re*
22 *TracFone Unlimited Serv. Plan Litig.*, 112 F. Supp. 3d 993, 1008 (N.D. Cal. 2015)). Mr. Sweeney bears
23 the burden of providing facts to establish standing, and in this case he failed to do so because he simply
24 asserted class membership upon “belief.” *In re Yahoo Mail Litig.*, 2016 WL 4474612, at *8. Courts
25 have imposed Rule 11 sanctions where the objector clearly could not establish class membership. *See,*
26 *e.g., In re Polyurethane Foam Antitrust Litig.*, 2015 WL 7313403, at *5-6 (N.D. Ohio Nov. 19, 2015)
27 (imposing sanctions on objector who could not reasonably believe that he was a member of the class and
28 who “unsuccessfully sought to extort money from the Class”).

1 Prior to filing the Sweeney Objection, Mr. Sweeney had notice that class membership cannot be
2 established only upon “belief” when filing an objection. *See TRS Recovery Servs. & Telecheck Servs.*,
3 2016 WL 543137, at *6 n.16 (rejecting Mr. Sweeney’s objection in part because he “furnished no basis
4 to conclude that he is even a class member . . . [and] his claim to membership is based only ‘on belief’”).
5 Yet when Mr. Sweeney was asked at his deposition last month to provide an evidentiary basis for his
6 claim that he is a class member, he admitted it was based only on a guess. *In re Yahoo Mail Litig.*, 2016
7 WL 4474612, at *8. Given Mr. Sweeney’s history and testimony, his unsupported guess violates the
8 requirement in Rule 11(b)(3) that “factual contentions have evidentiary support.”

9 2. Mr. Sweeney Objects to a Non-Existent Claims Process

10 Plaintiffs in this case sought and obtained injunctive relief only. There is no claims process for
11 class members, and no class member (other than the named plaintiffs) released any money damage
12 claims by this settlement. Nevertheless, Mr. Sweeney objected to a “claims process,” repeating the
13 same baseless form objection used in other cases including his intent to file a claim in this case. When
14 asked at his deposition to explain his objection, Mr. Sweeney testified that he now believes there is no
15 claim process, but “[w]hat I thought when I filed this, I’m not sure.” Tr. 51:3-10. Mr. Sweeney also
16 testified that he did not know whether he was guessing at the time he wrote the objection “or it was what
17 I intended to do at the time, not knowing that there was no claim to be filed.” Tr. 51:16-25. This
18 objection therefore lacks any evidence of reasonable inquiry, and violates the requirement in Rule
19 11(b)(3) that “factual contentions have evidentiary support.”

20 3. Mr. Sweeney’s Objection to the Request For Attorneys’ Fees

21 Finally, Mr. Sweeney opposed Plaintiffs’ request for attorney’s fees based on a metric never
22 recognized by any court. He proposed to divide the requested attorneys’ fees by the number of docket
23 entries, and then argued that the resulting figure was too high. No court has ever evaluated a fee request
24 based on this proposed metric, a fact Mr. Sweeney admitted during his deposition. Tr. 78:3-9 (“Q: Are
25 you aware of any case in the Ninth Circuit or elsewhere, where a Court evaluated the reasonableness of
26 the fee request based on the number of docket entries? A: No. No, I’d like to think I’m a trendsetter in
27 that area.”).

1 Rule 11(b)(2) requires that legal contentions be “warranted by existing law or by a nonfrivolous
2 argument for extending, modifying, or reversing existing law or for establishing new law.” Here, Mr.
3 Sweeney admitted that his contention is not warranted by existing law, but also failed to provide any
4 argument (frivolous or not) to change the law. He even admitted that his proposed metric fails to
5 capture discovery efforts if unaccompanied by motion practice, and further admitted “discovery
6 sometimes can take up a very large portion of the case. A docket wouldn’t necessarily reflect that
7 without discovery disputes.” Tr. 78:20-79:13. Mr. Sweeney’s argument for changing the law is thus not
8 only frivolous, but by his own admission flawed.

9 Worse, even if one were to consider the metric generally, Mr. Sweeney failed to conduct the
10 most basic inquiry into the data he deems relevant, as required by Rule 11. For example, Mr. Sweeney
11 stated that no summary judgment motion was filed (the parties in fact filed cross-motions for summary
12 judgment and filed cross-motions to exclude expert testimony), and he admitted that summary judgment
13 would have given him comfort that more substantive work had been done. Tr. 76:16-23. He also
14 admitted he could not recall if he actually read Plaintiffs’ motion for preliminary approval of the
15 settlement. Tr. 77:9-11. Finally, he failed to research whether detailed billing records were provided
16 (they were), and objected to fees on this basis. Because Mr. Sweeney’s objection to fees was based
17 primarily on a docket-based metric, it is a violation of his duty of reasonable inquiry under Rule 11 not
18 to review the docket.

19 *B. The Sweeney Objection Was Filed for Improper Purpose*

20 1. The Court Can Infer Bad Faith Based on Past Objections

21 Rule 11(b)(1) forbids filing a document for “improper purpose.” Where an objection to a class
22 action settlement is made for the purpose of delaying the settlement to extract a fee, the objection is
23 made for an improper purpose. *Roberts*, 2014 WL 4568632, at *12; *see also In re Checking Account*
24 *Overdraft Litig.*, 830 F. Supp. 2d 1330, 1362 n.30 (S.D. Fla. 2011) (“[M]ost if not all of the Objections
25 are motivated by things other than a concern for the welfare of the Settlement Class. Instead, they have
26 been brought by professional objectors and others whose sole purpose is to obtain a fee by objecting to
27 whatever aspects of the Settlement they can latch onto.”). In determining an objector’s motive, a court
28 may also consider an objector’s past history of objections. *In re Polyurethane Foam Antitrust Litig.*,

1 2016 WL 1452005, at *3 (“[A] history of misconduct strongly suggests . . . [lack of] good faith.”);
2 *Roberts*, 2014 WL 4568632, at *12 (“[T]he fact that [Mr. Sweeney] is also a serial objector in class
3 action matters raises additional issues as to the legitimacy of the objection”); *In re Netflix Privacy Litig.*,
4 No. 5:11-cv-0379-EJD, 2013 WL 6173772, at *2 (N.D. Cal. Nov. 25, 2013) (noting that past history is
5 relevant to determine objector’s “role in objecting to this and other class settlements”).

6 Discovery in this case has revealed a disturbing pattern in Mr. Sweeney’s past objections and
7 strongly suggests improper motive in this case. Attachment A to the Response to Objection (ECF No.
8 197) is a chart of more than 20 objections filed by Mr. Sweeney in the past year. Some of these
9 objections are currently pending, but none has been sustained by any court. When an objection is
10 overruled, Mr. Sweeney either appeals (causing more delay) or receives a cash settlement in exchange
11 for withdrawing the objection.¹ Only one conclusion can be drawn from this data set: Mr. Sweeney files
12 objections for the improper purpose of extracting a fee.

13 Most significant is Mr. Sweeney’s recent \$17,500 cash settlement in exchange for withdrawing
14 his objection in *Chimeno-Buzzi v. Hollister Co.*, No. 1:14-cv-23120 (S.D. Fla.). Mr. Sweeney agreed to
15 withdraw his objection and signed a settlement agreement admitting that the objection was “without
16 merit.” Tr. 211:8-19. When shown his *Hollister* admission at his deposition in this case, Mr. Sweeney
17 testified that while he does think the objection had merit, “I’m fine with signing that.” Tr. 211:20-24.
18 He just wanted his money. The Northern District of Ohio also identified Mr. Sweeney as a serial
19 objector who engaged in “bad faith and vexatious conduct, both in prior cases and in this action, in the
20 pursuit of a payoff.” *In re Polyurethane Foam Antitrust Litig.*, 2016 WL 1452005, at *3. Mr.
21 Sweeney’s past history supports no other conclusion.

22 Finally, discovery has revealed that Mr. Sweeney is in extreme financial distress, further
23 suggesting improper motive for his “business” of objecting to class settlements. As detailed in the
24 Response to Objection, Mr. Sweeney has almost no assets in his own name, and insufficient assets to
25 pay his outstanding debt, which may exceed \$1 million. Tr. 159:4-10. He owes back taxes to the
26 Internal Revenue Service (Tr. 184:2-10) and to the Wisconsin Department of Revenue (Tr. 182:23-

27
28 ¹ In three cases, Mr. Sweeney withdrew his objections following the plaintiffs’ motions for sanctions.
See Attachment A to the Response to Objection.

1 25), but has not filed a tax return in two years (Tr. 184:11-13). No bank will do business with him
2 after he filed for bankruptcy in 2013, so his daughter holds his money and pays his bills as needed. Tr.
3 177:10-178:25. It is also unclear whether Mr. Sweeney will be able earn income in his chosen
4 profession in the future. He no longer has a law office and is facing disbarment—the Wisconsin
5 Office of Lawyer Regulation (“OLR”) accuses him of professional misconduct, including practicing
6 law with a suspended license, violation of a court order, conflict of interest, and engaging in conduct
7 involving dishonesty, fraud, deceit, or misrepresentation. Tr. 153:7-164:20; *see also* ECF No. 195-8
8 (providing OLR complaint). Additionally, Mr. Sweeney is a defendant in an ongoing lawsuit by Barry
9 Alvarez, the Director of Athletics at the University of Wisconsin, seeking over \$1 million for legal
10 malpractice, fraud, and breach of contract. Tr. 173:1-2.

11 2. Mr. Sweeney Placed His Own Interests Ahead of the Interests of the Classes

12 Mr. Sweeney admitted that the injunctive relief obtained in this case is a “positive result” and
13 protecting data privacy generally is a “worthy” goal. Tr. 67:20, 70:22-71:9. Yet he admitted that he was
14 not aware whether Yahoo had implemented the injunctive relief, that a delay would harm the class, and
15 that he failed to consider whether his objection might cause delay. Tr. 60:13-61:3. He also failed to
16 articulate any way that a reduction in fees could possibly benefit the class, knowing full well that the
17 Court only certified a Rule 23(b)(2) class, and admitted that he failed to research this point before
18 making his objection. Tr. 90:24-92:4. Mr. Sweeney therefore was willing to risk harming the class to
19 pursue his own interests when he filed his objection, and his deposition testimony confirmed complete
20 indifference to the interests of the class with respect to the harm caused by any delay. This is improper
21 purpose under any view of Rule 11.

22 **V. CONCLUSION**

23 Plaintiffs therefore request that the Court find that objector Patrick S. Sweeney violated Rule 11
24 and order him to pay to Plaintiffs \$69,019 in additional attorneys’ fees and \$6,617.84 in additional
25 unreimbursed expenses.

26
27 [signatures follow on next page]
28

1 Dated: September 29, 2016

Respectfully Submitted,

2 **KAPLAN FOX & KILSHEIMER LLP**

GIRARD GIBBS LLP

3 By: /s/ Laurence D. King

By: /s/ Daniel C. Girard

4 Laurence D. King (SBN 206423)

Daniel C. Girard (SBN 114826)

5 350 Sansome Street, Suite 400

Jordan Elias (SBN 228731)

6 San Francisco, CA 94104

601 California Street, 14th Floor

7 Telephone: (415) 772-4700

San Francisco, CA 94108

8 Facsimile: (415) 772-4707

Telephone: (415) 981-4800

9 *lking@kaplanfox.com*

Facsimile: (415) 981-4846

dcg@girardgibbs.com

10 Frederic S. Fox (admitted *pro hac vice*)

Co-Lead Class Counsel

11 David A. Straite (admitted *pro hac vice*)

12 850 Third Ave., 14th Floor

13 New York, NY 10022

14 Telephone: (212) 687-1980

15 Facsimile: (212) 687-7714

16 *dstraite@kaplanfox.com*

17 *Co-Lead Class Counsel*

1 Daniel C. Girard (SBN 114826)
Amanda M. Steiner (SBN 190047)

2 **GIRARD GIBBS LLP**
3 601 California Street, 14th Floor
4 San Francisco, CA 94108
5 Telephone: (415) 981-4800
6 Facsimile: (415) 981-4846
7 *dcg@girardgibbs.com*

8 Laurence D. King (SBN 206423)
9 **KAPLAN FOX & KILSHEIMER LLP**
10 350 Sansome Street, Suite 400
11 San Francisco, CA 94104
12 Telephone: (415) 772-4700
13 Facsimile: (415) 772-4707
14 *lking@kaplanfox.com*

Frederic S. Fox (admitted *pro hac vice*)
David A. Straite (admitted *pro hac vice*)
KAPLAN FOX & KILSHEIMER LLP
850 Third Ave., 14th Floor
New York, NY 10022
Telephone: (212) 687-1980
Facsimile: (212) 687-7714
dstraite@kaplanfox.com

15 *Co-Lead Class Counsel*

16
17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19 **SAN JOSE DIVISION**

20 IN RE: YAHOO MAIL LITIGATION

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

**DECLARATION OF LAURENCE D. KING
IN SUPPORT OF PLAINTIFFS' MOTION
FOR SANCTIONS**

21 Date: December 22, 2016
22 Time: 1:30PM
23 Location: Courtroom 8
24 280 South 1st Street
25 San Jose, CA 95113

1 I, Laurence D. King, hereby declare as follows:

2 1. I am an attorney licensed to practice in the State of California and before this Court. I am
3 a partner in the law firm of Kaplan Fox & Kilsheimer LLP, Co-Lead Class Counsel for plaintiffs in this
4 class action against Defendant Yahoo! Inc.

5 2. I submit this declaration in support of plaintiffs' motion for sanctions on objector Patrick
6 S. Sweeney, Esq. (the "Motion").

7 3. The following statements are based on my personal knowledge and review of the files in
8 this case and, if called on to do so, I could and would testify competently thereto.

9 4. On Tuesday, September 6, 2016, at my direction, David Straite, an attorney at my firm,
10 emailed a draft of the Motion to Patrick S. Sweeney, Esq., at patrick@sweeneylegalgroup.com. I
11 understand that at his August 5, 2016 deposition, Mr. Sweeney agreed to accept service of process in
12 this case via email. The agreement appears on page 30 of the deposition transcript, provided to the
13 Court on August 11, 2016 [ECF No. 197-2].

14 5. The draft emailed to Mr. Sweeney on September 6, 2016 was materially identical to the
15 Motion filed with the Court with the exception of a hearing date. A true and correct copy of the email
16 and the motion sent to Mr. Sweeney is attached to this declaration as Exhibit A.

17
18 I declare under penalty of perjury under the laws of California that the foregoing is true and
19 correct. Executed on this 29th day of September, 2016, at San Francisco, California.

20
21 /s/ Laurence D. King
22 Laurence D. King
23
24
25
26
27
28

Exhibit A

From: David Straite
Sent: Tuesday, September 06, 2016 7:39 PM
To: Patrick Sweeney; 'Patrick Sweeney'
Subject: In re Yahoo Mail Litigation, 5:13-cv-4980 (N.D. Cal.)
Attachments: Yahoo Mail Litig -- FINAL REVISED draft pls motion for sanctions 6 SEP 2016.pdf

Dear Patrick,

Pursuant to Fed. R. Civ. P. 11(c), attached to this email is a draft motion for sanctions against you. If you do not withdraw your objection (ECF No. 194) we will be forced to file the attached with the Court. Please contact me to discuss.

Regards,

David A. Straite
Kaplan Fox & Kilsheimer LLP
850 Third Avenue
New York, NY 10022
Tel. +1.212.687.1980
Fax +1.212.687.7714

1 Daniel C. Girard (SBN 114826)
Jordan Elias (SBN 228731)
2 **GIRARD GIBBS LLP**
601 California Street, 14th Floor
3 San Francisco, CA 94108
4 Telephone: (415) 981-4800
5 Facsimile: (415) 981-4846
dcg@girardgibbs.com

6 Laurence D. King (SBN 206423)
KAPLAN FOX & KILSHEIMER LLP
7 350 Sansome Street, Suite 400
8 San Francisco, CA 94104
Telephone: (415) 772-4700
9 Facsimile: (415) 772-4707
lking@kaplanfox.com

Frederic S. Fox (admitted *pro hac vice*)
David A. Straite (admitted *pro hac vice*)
KAPLAN FOX & KILSHEIMER LLP
850 Third Ave., 14th Floor
New York, NY 10022
Telephone: (212) 687-1980
Facsimile: (212) 687-7714
dstraite@kaplanfox.com

11 *Co-Lead Class Counsel*

12
13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN JOSE DIVISION**

16
17 IN RE: YAHOO MAIL LITIGATION

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

18 **PLAINTIFFS' NOTICE OF MOTION AND**
19 **MOTION FOR SANCTIONS ON OBJECTOR**
20 **PATRICK S. SWEENEY; MEMORANDUM**
21 **OF POINTS AND AUTHORITIES IN**
22 **SUPPORT**

Fed. R. Civ. P. 11; L.R. 3-9 and 7-8

23 Date: [REDACTED]

24 Time: [REDACTED]

25 Location: Courtroom 8
26 280 South 1st Street
27 San Jose, CA 95113
28

1 **NOTICE OF MOTION AND MOTION**

2 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

3 PLEASE TAKE NOTICE that by this motion, and at the time and place designated above,
4 Plaintiffs Cody Baker, Brian Pincus, Rebecca Abrams, and Halima Nobles (“Plaintiffs”) will and hereby
5 do move for an order of sanctions on Patrick S. Sweeney, Esq. (“Sweeney”) pursuant to Federal Rule of
6 Civil Procedure 11(c).

7 Plaintiffs file this motion because Mr. Sweeney made a baseless objection to the settlement of
8 this action without a reasonable and competent inquiry and for an improper purpose. As a result of
9 efforts to build a record for the Court to evaluate the improper objection, Plaintiffs (through Class
10 Counsel) incurred \$69,019 in additional attorneys’ fees and \$6,617.84 in additional unreimbursed
11 expenses. The motion is based on this Notice of Motion and Motion, the supporting Memorandum, the
12 argument of counsel, the transcript of the deposition of Sweeney dated August 5, 2016, and all other
13 papers and records on file in this matter. The motion is also supported by the accompanying declaration
14 of Laurence D. King (the “King Declaration”).

15 Dated: September [], 2016

Respectfully Submitted,

16 **KAPLAN FOX & KILSHEIMER LLP**

17 **GIRARD GIBBS LLP**

18 By: /s/
19 Laurence D. King (SBN 206423)
20 350 Sansome Street, Suite 400
21 San Francisco, CA 94104
22 Telephone: (415) 772-4700
23 Facsimile: (415) 772-4707
24 *lking@kaplanfox.com*

By: /s/
Daniel C. Girard (SBN 114826)
Jordan Elias (SBN 228731)
601 California Street, 14th Floor
San Francisco, CA 94108
Telephone: (415) 981-4800
Facsimile: (415) 981-4846
dgc@girardgibbs.com

23 Frederic S. Fox (admitted *pro hac vice*)
24 David A. Straite (admitted *pro hac vice*)
25 850 Third Ave., 14th Floor
26 New York, NY 10022
27 Telephone: (212) 687-1980
28 Facsimile: (212) 687-7714
dstraite@kaplanfox.com

Co-Lead Class Counsel

Co-Lead Class Counsel

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs respectfully move for an order of sanctions on serial *pro se* objector Patrick S.
4 Sweeney, Esq. in connection with his July 14, 2016 objection to the settlement of this action (the
5 “Sweeney Objection,” ECF No. 194). The baseless Sweeney Objection was filed without a reasonable
6 and competent inquiry and was made for an improper purpose. In order to build a record for the Court
7 to evaluate the improper objection, Plaintiffs (through Class Counsel) were forced to incur \$69,019 in
8 additional attorneys’ fees and \$6,617.84 in additional unreimbursed expenses. *See* Statement Regarding
9 Lodestar and Fees Pursuant to Order of August 14, 2016, ECF No. 201. This motion is accompanied by
10 the declaration of Laurence D. King (the “King Declaration”). Consistent with Federal Rule of Civil
11 Procedure 11(c)(2), Plaintiffs served Mr. Sweeney with this motion at least 21 days before it was filed.
12 *See* King Decl. ¶ [].

13 **II. RELEVANT BACKGROUND**

14 **A. Settlement Proceedings in This Court**

15 After the close of expert and fact discovery, and after briefing on cross-motions for summary
16 judgment was completed, the parties reached an agreement to settle this litigation on January 7, 2016.
17 Plaintiffs moved for preliminary approval on the same day. ECF No. 174. The Court held a
18 Preliminary Approval Hearing on March 10, 2016. At the Court’s direction, the parties filed an
19 addendum to the settlement agreement on March 15, 2016 to streamline procedures for objections.
20 Upon receipt of the addendum, the Court granted preliminary approval of the settlement (the
21 “Preliminary Approval Order,” ECF No. 182) and re-certified two classes, a California Invasion of
22 Privacy Act class and a Stored Communications Act class. *Id.* ¶ 9. The objection deadline was July 1,
23 2016, *see id.* ¶ 9, and the final approval hearing was held on August 25, 2016 at 1:30 p.m. The Court
24 granted final approval of the settlement and overruled the Sweeney Objection. *In re: Yahoo Mail Litig.*,
25 2016 WL 4474612, at *7 (N.D. Cal. Aug. 25, 2016) (“The information obtained from the discovery,
26 along with the record in this case, demonstrate that Sweeney’s objection lacks merit.”).

1 **B. The Sweeney Objection and Mr. Sweeney’s History of Improper Objections**

2 The Sweeney Objection was the only objection to the settlement. Mr. Sweeney did not oppose
3 the substance of the settlement, and only objected to the claims administration process and Plaintiffs’
4 request for attorneys’ fees. On July 22, 2016, Class Counsel moved for leave to conduct expedited
5 discovery of Mr. Sweeney, including taking his deposition (ECF No. 195), which the Court granted on
6 July 25, 2016, (ECF No. 196). Class Counsel deposed Mr. Sweeney in his home state of Wisconsin,
7 which was Mr. Sweeney’s first deposition in his capacity as an objector to a class settlement. *See*
8 *Transcript of Deposition of Patrick S. Sweeney* dated August 5, 2016 (“Tr.”) 12:23-25, ECF No. 197-2.

9 Discovery and Class Counsel’s research confirmed in starkest terms that Sweeney is a bad-faith
10 serial objector—either in his own capacity, as counsel, or as ghost-writer for other objectors. *See In re:*
11 *Yahoo Mail Litig.*, 2016 WL 4474612, at *8. By 2014, numerous courts had already identified Mr.
12 Sweeney as a serial objector. *See, e.g., Larson v. Trader Joe’s Co.*, No. 11-cv-05188-WHO, 2014 WL
13 3404531, at *6-7 (N.D. Cal. July 11, 2014) (noting Mr. Sweeney’s “long history of representing
14 objectors”); *Roberts v. Electrolux Home Prods., Inc.*, No. SACV12-1644-CAS (VBKx), 2014 WL
15 4568632, at *12-15 (C.D. Cal. Sept. 11, 2014) (recognizing Mr. Sweeney as a lawyer “who routinely
16 files objections to class settlements”). Since 2014, Sweeney has filed at least 20 additional objections.
17 *See Plaintiffs’ Response to Objection to Class Settlement (“Response to Objection”)*, Attachment A
18 (listing objections), ECF No. 197. And his pace of objections is now “accelerating.” Tr. 148:22-149:12.
19 Mr. Sweeney is literally a professional objector—he considers his objections as part of a business. Tr.
20 149:13-22.

21 Review of other cases, and by Mr. Sweeney’s own admission, confirm that the Sweeney
22 Objection is based on a standard boilerplate “form” that Mr. Sweeney uses in all his objections. Tr.
23 106:9-15; *see also In re Polyurethane Foam Antitrust Litig.*, No. 10-2196, 2016 WL 1452005, at *3
24 (N.D. Ohio Apr. 13, 2016) (finding Mr. Sweeney’s “objections amount to pure boilerplate language,
25 wholly untethered from the actual terms of the settlement”); *In re TRS Recovery Servs., Inc. &*
26 *Telecheck Servs., Inc., Fair Debt Collection Practices Act (FDCPA) Litig.*, No. 13-2426, 2016 WL
27 543137, at *6 n.16 (D. Me. Feb. 10, 2016) (“[Mr. Sweeney’s] listed objections are without merit and
28 appear to be a form document . . . that he has filed in other class action settlements.”).

1 **III. LEGAL STANDARD**

2 Federal Rule of Civil Procedure 11 applies to *pro se* filings to the same extent as filings made by
3 represented parties. *See* Fed. R. Civ. P. 11(a) (every paper filed with the Court “must be signed . . . by a
4 party personally if the party is unrepresented”); *see also* L.R. 3-9 (person proceeding *pro se* “is bound
5 by the Federal Rules as well as by all applicable local rules”). Rule 11(b) provides that by presenting
6 any paper to the court, the filer “certifies to the best of the person’s knowledge, information and belief,
7 formed after an inquiry reasonable under the circumstances” that the document is not being filed for an
8 improper purpose and is not frivolous. A violation of Rule 11(b) can subject the filer to sanctions under
9 11(c). In the Ninth Circuit, Rule 11(c) sanctions are appropriate if either test of improper purpose or
10 frivolousness is met. *Truesdell v. S. Cal. Permanente Med. Grp.*, 293 F.3d 1146, 1153 (9th Cir. 2002)
11 (“Rule 11(c) allows sanctions if a filing suffers from *either* of those defects.”). A filing is frivolous if it
12 “is both baseless and made without a reasonable and competent inquiry.” *Townsend v. Holman*
13 *Consulting Corp.*, 929 F.2d 1358, 1362 (9th Cir. 1990) (affirming sanctions imposed on plaintiff for
14 frivolous filing of amended complaint without any reasonable inquiry). Finally, the goal of Rule 11 is to
15 deter baseless or otherwise improper filings, regardless of whether the filing resulted in any significant
16 delay of the proceedings. *Christian v. Mattel, Inc.*, 286 F.3d 1118, 1127 (9th Cir. 2002).

17 **IV. THE SWEENEY OBJECTION WARRANTS SANCTIONS**

18 *A. The Sweeney Objection Was Filed Without Reasonable and Competent Inquiry*

19 1. Mr. Sweeney Failed to Provide any Evidence of Standing

20 “Formal objections may only be made by class members.” *In re: Cathode Ray Tube (CRT)*
21 *Antitrust Litig.*, No. 07-cv-5944-JST, 2016 WL 3648478, at *23 (N.D. Cal. July 7, 2016) (citing *In re*
22 *TracFone Unlimited Serv. Plan Litig.*, 112 F. Supp. 3d 993, 1008 (N.D. Cal. 2015)). Mr. Sweeney bears
23 the burden of providing facts to establish standing, and in this case he failed to do so because he simply
24 asserted class membership upon “belief.” *In re Yahoo Mail Litig.*, 2016 WL 4474612, at *8. Courts
25 have imposed Rule 11 sanctions where the objector clearly could not establish class membership. *See,*
26 *e.g., In re Polyurethane Foam Antitrust Litig.*, 2015 WL 7313403, at *5-6 (N.D. Ohio Nov. 19, 2015)
27 (imposing sanctions on objector who could not reasonably believe that he was a member of the class and
28 who “unsuccessfully sought to extort money from the Class”).

1 Prior to filing the Sweeney Objection, Mr. Sweeney had notice that class membership cannot be
2 established only upon “belief” when filing an objection. *See TRS Recovery Servs. & Telecheck Servs.*,
3 2016 WL 543137, at *6 n.16 (rejecting Mr. Sweeney’s objection in part because he “furnished no basis
4 to conclude that he is even a class member . . . [and] his claim to membership is based only ‘on belief’”).
5 Yet when Mr. Sweeney was asked at his deposition last month to provide an evidentiary basis for his
6 claim that he is a class member, he admitted it was based only on a guess. *In re Yahoo Mail Litig.*, 2016
7 WL 4474612, at *8. Given Mr. Sweeney’s history and testimony, his unsupported guess violates the
8 requirement in Rule 11(b)(3) that “factual contentions have evidentiary support.”

9 2. Mr. Sweeney Objects to a Non-Existent Claims Process

10 Plaintiffs in this case sought and obtained injunctive relief only. There is no claims process for
11 class members, and no class member (other than the named plaintiffs) released any money damage
12 claims by this settlement. Nevertheless, Mr. Sweeney objected to a “claims process,” repeating the
13 same baseless form objection used in other cases including his intent to file a claim in this case. When
14 asked at his deposition to explain his objection, Mr. Sweeney testified that he now believes there is no
15 claim process, but “[w]hat I thought when I filed this, I’m not sure.” Tr. 51:3-10. Mr. Sweeney also
16 testified that he did not know whether he was guessing at the time he wrote the objection “or it was what
17 I intended to do at the time, not knowing that there was no claim to be filed.” Tr. 51:16-25. This
18 objection therefore lacks any evidence of reasonable inquiry, and violates the requirement in Rule
19 11(b)(3) that “factual contentions have evidentiary support.”

20 3. Mr. Sweeney’s Objection to the Request For Attorneys’ Fees

21 Finally, Mr. Sweeney opposed Plaintiffs’ request for attorney’s fees based on a metric never
22 recognized by any court. He proposed to divide the requested attorneys’ fees by the number of docket
23 entries, and then argued that the resulting figure was too high. No court has ever evaluated a fee request
24 based on this proposed metric, a fact Mr. Sweeney admitted during his deposition. Tr. 78:3-9 (“Q: Are
25 you aware of any case in the Ninth Circuit or elsewhere, where a Court evaluated the reasonableness of
26 the fee request based on the number of docket entries? A: No. No, I’d like to think I’m a trendsetter in
27 that area.”).

1 Rule 11(b)(2) requires that legal contentions be “warranted by existing law or by a nonfrivolous
2 argument for extending, modifying, or reversing existing law or for establishing new law.” Here, Mr.
3 Sweeney admitted that his contention is not warranted by existing law, but also failed to provide any
4 argument (frivolous or not) to change the law. He even admitted that his proposed metric fails to
5 capture discovery efforts if unaccompanied by motion practice, and further admitted “discovery
6 sometimes can take up a very large portion of the case. A docket wouldn’t necessarily reflect that
7 without discovery disputes.” Tr. 78:20-79:13. Mr. Sweeney’s argument for changing the law is thus not
8 only frivolous, but by his own admission flawed.

9 Worse, even if one were to consider the metric generally, Mr. Sweeney failed to conduct the
10 most basic inquiry into the data he deems relevant, as required by Rule 11. For example, Mr. Sweeney
11 stated that no summary judgment motion was filed (the parties in fact filed cross-motions for summary
12 judgment and filed cross-motions to exclude expert testimony), and he admitted that summary judgment
13 would have given him comfort that more substantive work had been done. Tr. 76:16-23. He also
14 admitted he could not recall if he actually read Plaintiffs’ motion for preliminary approval of the
15 settlement. Tr. 77:9-11. Finally, he failed to research whether detailed billing records were provided
16 (they were), and objected to fees on this basis. Because Mr. Sweeney’s objection to fees was based
17 primarily on a docket-based metric, it is a violation of his duty of reasonable inquiry under Rule 11 not
18 to review the docket.

19 *B. The Sweeney Objection Was Filed for Improper Purpose*

20 1. The Court Can Infer Bad Faith Based on Past Objections

21 Rule 11(b)(1) forbids filing a document for “improper purpose.” Where an objection to a class
22 action settlement is made for the purpose of delaying the settlement to extract a fee, the objection is
23 made for an improper purpose. *Roberts*, 2014 WL 4568632, at *12; *see also In re Checking Account*
24 *Overdraft Litig.*, 830 F. Supp. 2d 1330, 1362 n.30 (S.D. Fla. 2011) (“[M]ost if not all of the Objections
25 are motivated by things other than a concern for the welfare of the Settlement Class. Instead, they have
26 been brought by professional objectors and others whose sole purpose is to obtain a fee by objecting to
27 whatever aspects of the Settlement they can latch onto.”). In determining an objector’s motive, a court
28 may also consider an objector’s past history of objections. *In re Polyurethane Foam Antitrust Litig.*,

1 2016 WL 1452005, at *3 (“[A] history of misconduct strongly suggests . . . [lack of] good faith.”);
2 *Roberts*, 2014 WL 4568632, at *12 (“[T]he fact that [Mr. Sweeney] is also a serial objector in class
3 action matters raises additional issues as to the legitimacy of the objection”); *In re Netflix Privacy Litig.*,
4 No. 5:11-cv-0379-EJD, 2013 WL 6173772, at *2 (N.D. Cal. Nov. 25, 2013) (noting that past history is
5 relevant to determine objector’s “role in objecting to this and other class settlements”).

6 Discovery in this case has revealed a disturbing pattern in Mr. Sweeney’s past objections and
7 strongly suggests improper motive in this case. Attachment A to the Response to Objection (ECF No.
8 197) is a chart of more than 20 objections filed by Mr. Sweeney in the past year. Some of these
9 objections are currently pending, but none has been sustained by any court. When an objection is
10 overruled, Mr. Sweeney either appeals (causing more delay) or receives a cash settlement in exchange
11 for withdrawing the objection.¹ Only one conclusion can be drawn from this data set: Mr. Sweeney files
12 objections for the improper purpose of extracting a fee.

13 Most significant is Mr. Sweeney’s recent \$17,500 cash settlement in exchange for withdrawing
14 his objection in *Chimeno-Buzzi v. Hollister Co.*, No. 1:14-cv-23120 (S.D. Fla.). Mr. Sweeney agreed to
15 withdraw his objection and signed a settlement agreement admitting that the objection was “without
16 merit.” Tr. 211:8-19. When shown his *Hollister* admission at his deposition in this case, Mr. Sweeney
17 testified that while he does think the objection had merit, “I’m fine with signing that.” Tr. 211:20-24.
18 He just wanted his money. The Northern District of Ohio also identified Mr. Sweeney as a serial
19 objector who engaged in “bad faith and vexatious conduct, both in prior cases and in this action, in the
20 pursuit of a payoff.” *In re Polyurethane Foam Antitrust Litig.*, 2016 WL 1452005, at *3. Mr.
21 Sweeney’s past history supports no other conclusion.

22 Finally, discovery has revealed that Mr. Sweeney is in extreme financial distress, further
23 suggesting improper motive for his “business” of objecting to class settlements. As detailed in the
24 Response to Objection, Mr. Sweeney has almost no assets in his own name, and insufficient assets to
25 pay his outstanding debt, which may exceed \$1 million. Tr. 159:4-10. He owes back taxes to the
26 Internal Revenue Service (Tr. 184:2-10) and to the Wisconsin Department of Revenue (Tr. 182:23-
27

28 ¹ In three cases, Mr. Sweeney withdrew his objections following the plaintiffs’ motions for sanctions.
See Attachment A to the Response to Objection.

1 25), but has not filed a tax return in two years (Tr. 184:11-13). No bank will do business with him
2 after he filed for bankruptcy in 2013, so his daughter holds his money and pays his bills as needed. Tr.
3 177:10-178:25. It is also unclear whether Mr. Sweeney will be able earn income in his chosen
4 profession in the future. He no longer has a law office and is facing disbarment—the Wisconsin
5 Office of Lawyer Regulation (“OLR”) accuses him of professional misconduct, including practicing
6 law with a suspended license, violation of a court order, conflict of interest, and engaging in conduct
7 involving dishonesty, fraud, deceit, or misrepresentation. Tr. 153:7-164:20; *see also* ECF No. 195-8
8 (providing OLR complaint). Additionally, Mr. Sweeney is a defendant in an ongoing lawsuit by Barry
9 Alvarez, the Director of Athletics at the University of Wisconsin, seeking over \$1 million for legal
10 malpractice, fraud, and breach of contract. Tr. 173:1-2.

11 2. Mr. Sweeney Placed His Own Interests Ahead of the Interests of the Classes

12 Mr. Sweeney admitted that the injunctive relief obtained in this case is a “positive result” and
13 protecting data privacy generally is a “worthy” goal. Tr. 67:20, 70:22-71:9. Yet he admitted that he was
14 not aware whether Yahoo had implemented the injunctive relief, that a delay would harm the class, and
15 that he failed to consider whether his objection might cause delay. Tr. 60:13-61:3. He also failed to
16 articulate any way that a reduction in fees could possibly benefit the class, knowing full well that the
17 Court only certified a Rule 23(b)(2) class, and admitted that he failed to research this point before
18 making his objection. Tr. 90:24-92:4. Mr. Sweeney therefore was willing to risk harming the class to
19 pursue his own interests when he filed his objection, and his deposition testimony confirmed complete
20 indifference to the interests of the class with respect to the harm caused by any delay. This is improper
21 purpose under any view of Rule 11.

22 **V. CONCLUSION**

23 Plaintiffs therefore request that the Court find that objector Patrick S. Sweeney violated Rule 11
24 and order him to pay to Plaintiffs \$69,019 in additional attorneys’ fees and \$6,617.84 in additional
25 unreimbursed expenses.

26
27 [signatures follow on next page]
28

1 Dated: September [], 2016

Respectfully Submitted,

2 **KAPLAN FOX & KILSHEIMER LLP**

GIRARD GIBBS LLP

3 By: /s/
4 Laurence D. King (SBN 206423)
5 350 Sansome Street, Suite 400
6 San Francisco, CA 94104
7 Telephone: (415) 772-4700
8 Facsimile: (415) 772-4707
9 *lking@kaplanfox.com*

By: /s/
Daniel C. Girard (SBN 114826)
Jordan Elias (SBN 228731)
601 California Street, 14th Floor
San Francisco, CA 94108
Telephone: (415) 981-4800
Facsimile: (415) 981-4846
dcg@girardgibbs.com

8 Frederic S. Fox (admitted *pro hac vice*)
9 David A. Straite (admitted *pro hac vice*)
10 850 Third Ave., 14th Floor
11 New York, NY 10022
12 Telephone: (212) 687-1980
13 Facsimile: (212) 687-7714
14 *dstraite@kaplanfox.com*

Co-Lead Class Counsel

Co-Lead Class Counsel

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

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE YAHOO MAIL LITIGATION

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

**[PROPOSED] ORDER GRANTING
MOTION FOR SANCTIONS ON
OBJECTOR PATRICK S. SWEENEY,
ESQ.**

1 After the close of expert and fact discovery and after briefing on cross-motions for
2 summary judgment was completed, the parties reached an agreement to settle this litigation
3 on January 7, 2016. Plaintiffs moved for preliminary approval on the same day. ECF No.
4 174. The Court held a Preliminary Approval Hearing on March 10, 2016. At the Court's
5 direction, the parties filed an addendum to the settlement agreement on March 15, 2016 to
6 streamline procedures for objections. Upon receipt of the addendum, the Court granted
7 preliminary approval of the settlement (the "Preliminary Approval Order," ECF No. 182) and
8 confirmed its previous order certifying two classes, a California Invasion of Privacy Act class
9 and a Stored Communications Act class. *Id.* ¶ 9. The objection deadline was July 1, 2016.

10 On July 14, 2016, the Court received and docketed an objection from purported class
11 member Patrick S. Sweeney, Esq., proceeding *pro se*. ECF No. 194. The Sweeney
12 Objection was the only objection to the settlement. Mr. Sweeney did not oppose the
13 substance of the settlement, and only objected to the claims administration process and
14 Plaintiffs' request for attorneys' fees. On July 22, 2016, Class Counsel moved for leave to
15 conduct expedited discovery of Mr. Sweeney, including taking his deposition, ECF No. 195,
16 which the Court granted on July 25, 2016. ECF No. 196. Class Counsel deposed Mr.
17 Sweeney in his home state of Wisconsin. *See* Transcript of Deposition of Patrick S. Sweeney
dated August 5, 2016 ("Tr.") 12:23-25, ECF No. 197-2.

18 On August 11, 2016, Class Counsel filed a response to the Sweeney Objection. ECF
19 No. 197. Sweeney did not file a reply. The final approval hearing was held on August 25,
20 2016 at 1:30 p.m., and Sweeney was not present. The Court granted final approval of the
21 settlement and overruled the Sweeney Objection, holding that the "information obtained from
22 the discovery, along with the record in this case, demonstrate that Sweeney's objection lacks
23 merit."

24 On September 29, 2016, Class Counsel moved for an order of sanctions on Sweeney
25 to recover time and expenses incurred in responding to the Sweeney Objection. Class
26 Counsel represent that a copy of the motion was served on Sweeney at least 21 days prior to
27 filing the motion, in the manner requested by Sweeney during his sworn deposition. Tr.
28

1 29:21-31:1, ECF No. 197-2. The Court has considered the motion, the record, and the
2 arguments and authorities of counsel. Good cause appearing,

3 IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

- 4 1. Plaintiffs' motion is GRANTED.
- 5 2. The Court finds that the Sweeney Objection was baseless and filed without a reasonable
6 and competent inquiry in violation of Federal Rule of Civil Procedure 11. Specifically,
7 Sweeney failed to provide evidence of class membership in the Objection or at deposition;
8 Sweeney improperly objected to a non-existent claims process; and Sweeney improperly
9 objected to Plaintiffs' request for attorneys' fees without sufficient inquiry.
- 10 3. The Court further finds that the Sweeney Objection was filed in bad faith for the purpose
11 of delaying the settlement in an effort to extract a fee, in violation of Federal Rule of Civil
12 Procedure 11. The Court reaches this conclusion based on Sweeney's past history of
13 improper objections to class action settlement and on his own sworn testimony in this
14 case. The Court also reaches this conclusion based on Sweeney's admission to having
15 agreed to withdraw objections in at least eight other cases in exchange for money.
- 16 4. The Court confirms its earlier findings that the hourly rates charged by Class Counsel are
17 reasonable in this District.
- 18 5. Mr. Sweeney is therefore ordered to pay \$75,636.84 to Class Counsel within ten (10)
19 business days of the date of this Order.
- 20 6. Sweeney is further ordered to provide a copy of this Order to any court in which he is a
21 party to a current legal action, or an objector to a class action settlement (or counsel to an
22 objector), and on the copy of the Order shall clearly identify the proceeding in which he is
23 a party or the action in which he is objecting and state that the copy is being provided
24 under order of this Court. Sweeney is also ordered to provide a copy of this Order to the
25 Wisconsin Office of Lawyer Regulation and to the Wisconsin Supreme Court if the
26 disciplinary action against him (Case No. 2015AP1370-D) is still pending.
- 27 7. Within ten (10) days of the date of this Order, Sweeney shall certify to the Court, with
28 copies to all counsel on the same day, that Paragraph 6 has been complied with,
specifically stating which courts were notified.

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

8. Sweeney and the parties are reminded that in paragraph 24 of the Preliminary Approval Order, the Court retained exclusive jurisdiction “over this litigation and the Parties to this litigation, and each of the Class Members for all matters relating to this litigation, the Settlement Agreement, including (without limitation) all matters relating to the administration, interpretation, effectuation and/or enforcement of the Settlement Agreement and this Order.” Any motion for reconsideration of this Order or otherwise related to this Order shall be filed in this Court and no other.

IT IS SO ORDERED.

Dated: _____

THE HONORABLE LUCY H. KOH
United States District Judge

1 Daniel C. Girard (SBN 114826)
2 Amanda M. Steiner (SBN 190047)
3 Ashley Tveit (SBN 275458)

GIRARD GIBBS LLP

4 601 California Street, 14th Floor
5 San Francisco, CA 94104
6 Telephone: (415) 981-4800
7 Facsimile: (415) 981-4846
8 *dcg@girardgibbs.com*
9 *ast@girardgibbs.com*
10 *at@girardgibbs.com*

11 Laurence D. King (SBN 206423)
12 **KAPLAN FOX & KILSHEIMER LLP**
13 350 Sansome Street, Suite 400
14 San Francisco, CA 94104
15 Telephone: (415) 772-4700
16 Facsimile: (415) 772-4707
17 *lking@kaplanfox.com*

18 *Co-Lead Class Counsel*

19 Frederic S. Fox (admitted *pro hac vice*)
20 David A. Straite (admitted *pro hac vice*)
21 **KAPLAN FOX & KILSHEIMER LLP**
22 850 Third Ave., 14th Floor
23 New York, NY 10022
24 Telephone: (212) 687-1980
25 Facsimile: (212) 687-7714
26 *ffox@kaplanfox.com*
27 *dstraite@kaplanfox.com*

28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

IN RE YAHOO MAIL LITIGATION

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

CERTIFICATE OF SERVICE

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

CERTIFICATE OF SERVICE

In Re Yahoo Mail Litigation

United States District Court, Northern District of California, Case no.: 5:13-CV-04980-LHK

I, Wilfred Gomes, am employed in the County of New York, State of New York as a paralegal at Kaplan Fox & Kilsheimer LLP. I am over the age of eighteen years and not a party to the within entitled action; my business address is 850 Third Avenue, New York, New York 10022.

On September 29, 2016, I served true and correct copies of the following documents:

1. **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR SANCTIONS ON OBJECTOR PATRICK S. SWEENEY; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT;**
2. **DECLARATION OF LAURENCE D. KING IN SUPPORT OF MOTION FOR SANCTIONS; and**
3. **[PROPOSED] ORDER GRANTING MOTION FOR SANCTIONS**

by United States First-Class Mail to the following address:

Patrick S. Sweeney, Esq.
6666 Odana Road, #116
Madison, WI 53719

and by emailing PDFs of the same to Patrick S. Sweeney at Patrick@sweeneylegalgroup.com.

Dated: September 29, 2016
New York, New York

/s/ Wilfred Gomes
Wilfred Gomes