

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 *dcg@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' REPLY IN FURTHER
SUPPORT OF MOTION FOR SANCTIONS
ON OBJECTOR PATRICK S. SWEENEY**

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 **I. INTRODUCTION**

2 Serial *pro se* objector Patrick S. Sweeney, Esq. filed a baseless objection to the settlement of this
3 action without a reasonable and competent inquiry and for an improper purpose (the “Sweeney
4 Objection,” ECF No. 194). On September 29, 2016, plaintiffs moved for sanctions under Rule 11 (the
5 “Sanctions Motion,” ECF No. 209). Mr. Sweeney’s deadline to respond was October 13, 2016, but to
6 date plaintiffs have not received a response and nothing appears on the docket. Plaintiffs therefore
7 respectfully request that the Court vacate the hearing scheduled for December 22, 2016 and grant the
8 Sanctions Motion on the current record. This Reply is accompanied by the declaration of Wilfred
9 Gomes dated October 20, 2016 (the “Gomes Declaration”).

10 **II. RELEVANT SUPPLEMENTAL BACKGROUND**

11 On September 6, 2016, Class Counsel emailed a copy of the Sanctions Motion to Mr. Sweeney at
12 the email address he provided to the Court, and asked him to withdraw the objection. *See* Declaration of
13 Laurence King dated September 29, 2016 in Support of Sanctions Motion, ¶¶ 4-5 and Ex. A thereto,
14 ECF No. 209-1. Class Counsel mailed a hard copy to Mr. Sweeney via U.S. Mail on the same day to the
15 physical address Mr. Sweeney provided to the Court. *See* Gomes Decl. ¶ 5. To date, the hard copy has
16 not been returned as undeliverable. *Id.* ¶ 6.

17 On September 29, 2016, twenty-three days after the motion was served, Class Counsel filed it
18 with the Court. As was done twenty-three days earlier, the PACER-stamped Sanctions Motion was
19 served via email and U.S. Mail. ECF No. 209-3. On the same day, Mr. Sweeney responded via email
20 that he accepted service. Gomes Decl. ¶ 8 and Exhibit D thereto. Other than that email, Class Counsel
21 have not received a response to the Sanctions Motion via mail, *id.* ¶ 9, and nothing appears on the
22 docket.

23 **III. LEGAL STANDARD**

24 Sanctions imposed under Federal Rule of Civil Procedure 11 must comport with procedural due
25 process. *Childs v. State Farm Mut. Auto Ins. Co.*, 29 F.3d 1018, 1027 (9th Cir. 1994). Procedural due
26 process, in turn, requires “notice” and “an opportunity to be heard.” *Boddie v. Connecticut*, 401 U.S.
27 371, 379 (1971). The “notice” and “opportunity to be heard” requirements are built into Rule 11(c)(1),
28 and are satisfied if the parties are given a reasonable amount of time to submit briefs following proper

1 notice of a filing. “The requirement of an opportunity to be heard, though, does not require an elaborate
2 or formal hearing.” *Childs*, 29 F.3d at 1027. “Simply giving the individual accused of a Rule 11
3 violation a chance to respond through the submission of a brief is usually all that due process requires.”
4 *Id.*

5 The Ninth Circuit’s view that hearings are not required prior to imposing Rule 11 sanctions is
6 shared by almost all circuits. *See, e.g., Metz v. Unizan Bank*, 655 F.3d 485 (6th Cir. 2011) (“there is no
7 requirement that a full evidentiary hearing be held before imposing sanctions”) (citations omitted);
8 *Schlaifer Nance & Co. v. Estate of Warhol*, 194 F.3d 323, 335 (2d Cir. 1999); *Merrimam v. Security Ins.*
9 *Co. of Hartford*, 100 F.3d 1187, 1192 (5th Cir. 1996). Hearings are also not required to impose
10 sanctions outside of the Rule 11 context. *See, e.g., In re: USA Comm. Mortg. Co.*, 462 Fed. Appx. 677,
11 680 (9th Cir. 2011) (“No evidentiary hearing was required” to sanction “discovery misconduct”);
12 *Peterson v. Highland Music, Inc.*, 140 F.3d 1313, 1324 (9th Cir. 1998) (if evidence of contempt is
13 uncontroverted, “a district court’s decision not to hold a full-blown evidentiary hearing does not violate
14 due process”).

15 **IV. IT IS APPROPRIATE TO VACATE THE DECEMBER 22 HEARING AND IMPOSE**
16 **SANCTIONS ON MR. SWEENEY BASED ON THE CURRENT RECORD**

17 *A. Mr. Sweeney Was Afforded Notice*

18 The record in this case clearly demonstrates that Mr. Sweeney has been afforded notice of all
19 relevant court filings and proceedings. Notice of the class action settlement, although not required, was
20 made by publication, as certified by Defendant Yahoo, Inc. on May 27, 2016. ECF No. 185. Mr.
21 Sweeney received notice of the settlement and mailed his objection on July 1, 2016. ECF No. 194. In
22 the objection, Mr. Sweeney acknowledged that a fairness hearing was scheduled, and correctly identified
23 the date, time and location of the fairness hearing. *Id.* at 1. At his August 5, 2016 deposition, Mr.
24 Sweeney agreed to accept service via email for any filing going forward, and identified his preferred
25 email address on the record. Transcript of Deposition of Patrick S. Sweeney, Esq. dated Aug. 5, 2016,
26 ECF No. 197-2 [hereinafter “Tr.”] at 29:21-31:1. Mr. Sweeney also identified his preferred physical
27 mailing address. Tr. 7:5-13; 37:9-25. Mr. Sweeney also admitted that he is a practicing lawyer, Tr.
28 36:22, that he has a PACER account, Tr. 103:25-104:9, and admitted that he checked the docket in this

1 case when preparing his objection. Tr. 62:18-24. Since Mr. Sweeney filed his objection, Class Counsel
2 has provided him email and hard copies of all relevant documents in real time.

3 On August 11, 2016, Class Counsel filed a response in opposition to the Sweeney Objection (the
4 “Response to Objection”), and mailed a copy to Mr. Sweeney via U.S. Mail to the address provided by
5 Mr. Sweeney. See ECF No. 197, Certificate of Service, p. 10. Class Counsel also emailed a courtesy
6 copy to Mr. Sweeney using the email address identified by Mr. Sweeney at his deposition. Gomes Decl.
7 ¶ 2 and Exhibit A thereto. On Saturday, August 13, 2016, Mr. Sweeney emailed Class Counsel and
8 asked for a copy of the deposition transcript “so I can review for accuracy.” Gomes Decl. ¶ 3 and
9 Exhibit B thereto. On Monday, August 15, 2016, Class Counsel emailed a copy of the transcript. *Id.*
10 On August 25, 2016, this Court granted final approval of the settlement (the “Order”) and ruled that the
11 Sweeney Objection “lacks merit.” *In re Yahoo Mail Litig.*, No. 13-CV-4980-LHK, 2016 WL 4474612,
12 at *7 (N.D. Cal. Aug. 25, 2016). Class Counsel sent a courtesy copy of the Order to Mr. Sweeney via
13 email on August 29, 2016 to the email address identified by Mr. Sweeney at this deposition. Gomes
14 Decl. ¶ 4 and Exhibit C thereto.

15 As noted above, on September 6, 2016, Class Counsel sent a copy of the Sanctions Motion to
16 Mr. Sweeney via email and U.S. Mail. After filing on September 29, 2016, Class Counsel again sent a
17 copy to Mr. Sweeney via email and U.S. Mail. Neither hard copy was returned as undeliverable, and
18 Mr. Sweeney acknowledged receipt of the Sanctions Motions on September 29, 2016. He also repeated
19 his August 5, 2016 agreement to accept service via email.

20 *B. Mr. Sweeney Was Afforded an Opportunity to Respond*

21 Mr. Sweeney has repeatedly failed to participate in the objection process that he improperly
22 initiated, including failing to respond to the Sanctions Motion. He did, however, have every opportunity
23 to do so.

24 First, Mr. Sweeney failed to produce any exculpatory or explanatory documents at his August 5,
25 2016 deposition or at any other time, despite this Court’s order that Mr. Sweeney comply with the
26 subpoena demanding the production of documents. ECF No. 196; *see also* Tr. 15:5-14 (admitting to
27 reading the entire order); Tr. 35:2-4 (“I read the order of Judge Koh. Q: By ‘order,’ do you mean
28

1 Exhibit 2? A: Yes.”). Mr. Sweeney did attend his deposition on August 5, 2016,¹ but other than a three-
2 page incomplete list of past objections, he failed to produce any documents at the deposition. *See* Tr.
3 18:3-29:20; *see also* Tr. 18:16-18 (Mr. Sweeney confirming that no document production would be
4 forthcoming even after the deposition). Worse, Mr. Sweeney did not even look for documents. Tr.
5 29:18-20 (“So, just to confirm, you didn’t search for documents related to this . . . A: I did not. I don’t
6 believe I have any.”). He did not even search his computer, which he claimed was in storage. Tr. 24:4-
7 20.

8 Second, Mr. Sweeney was afforded the opportunity to correct any inaccuracies in his deposition
9 transcript. Class Counsel provided a copy of the deposition transcript to Mr. Sweeney on August 15,
10 2016 in response to his request for a copy – a request he made specifically for the purpose of reviewing
11 the transcript for accuracy, as noted above. More than 2 months later, however, Mr. Sweeney has not
12 identified any errata to Class Counsel. *See also* Gomes Decl. ¶ 7.

13 Third, Mr. Sweeney had the opportunity to file a Reply to the August 11, 2016 Response to
14 Objection, but failed to do so – despite being served with the Response, as noted above.

15 Fourth, Mr. Sweeney had one last opportunity at the August 25, 2016 fairness hearing to address
16 plaintiffs’ opposition, or the deposition, or any evidence in the record, but Mr. Sweeney failed to attend.
17 *See* Transcript of Fairness Hearing at 7:10-14. Indeed, to the knowledge of Class Counsel he never even
18 requested permission to appear by telephone, and the Sweeney Objection clearly states that Mr.
19 Sweeney would not attend. *See* ECF No. 194. The Sweeney Objection also correctly identified the
20 date, time and location of the fairness hearing. *Id.*

21 Fifth, Mr. Sweeney had an opportunity to address the substance of the Sanctions Motion during
22 the 21-day safe harbor in Rule 11(c)(2) – Class Counsel actually gave him twenty-three days – but Mr.
23 Sweeney elected to remain silent. He never withdrew his objection, nor sought to correct any facts in
24 the record or in the Sanctions Motion.

25 Sixth and finally, when the Sanctions Motion was filed on September 29, 2016, Mr. Sweeney
26 acknowledged receipt and accepted service, but then failed to file any response.

27
28 ¹ Mr. Sweeney showed up forty-four minutes late. He testified that he picked up a hitch-hiker while
driving to the deposition. Tr. 33:20-34:7.

1 **V. ALTERNATIVE REQUEST FOR LEAVE TO SUPPLEMENT THIS REPLY**

2 In the event Mr. Sweeney chooses to respond to the Sanctions Motion (or in the event that his
3 response was served via U.S. Mail and surfaces in the near future), plaintiffs will approach the Court and
4 request leave to supplement this Reply.

5 **VI. CONCLUSION**

6 Plaintiffs respectfully request that the Court vacate the hearing scheduled for December 22, 2016
7 and grant plaintiffs' Sanctions Motion.

8 Dated: October 20, 2016

Respectfully Submitted,

9 **KAPLAN FOX & KILSHEIMER LLP**

GIRARD GIBBS LLP

10 By: /s/ Laurence D. King

By: /s/ Daniel C. Girard

11 Laurence D. King (SBN 206423)
12 350 Sansome Street, Suite 400
13 San Francisco, CA 94104
14 Telephone: (415) 772-4700
15 Facsimile: (415) 772-4707
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16 Frederic S. Fox (admitted *pro hac vice*)
17 David A. Straite (admitted *pro hac vice*)
18 850 Third Ave., 14th Floor
19 New York, NY 10022
20 Telephone: (212) 687-1980
21 Facsimile: (212) 687-7714
dstraite@kaplanfox.com

Co-Lead Class Counsel

Co-Lead Class Counsel

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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

**DECLARATION OF WILFRED GOMES IN
SUPPORT OF PLAINTIFFS' MOTION FOR
SANCTIONS**

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

1 I, Wilfred Gomes, declare as follows:

2 1. I am a paralegal in the New York office of Kaplan Fox & Kilsheimer LLP (“Kaplan
3 Fox”), Co-Lead Class Counsel for plaintiffs in this class action against Defendant Yahoo! Inc. I am
4 over 21 years of age and the facts attested to herein are within my personal knowledge.

5 2. Attached hereto as **Exhibit A** is a true and correct printout of email correspondence with
6 objector Patrick S. Sweeney, Esq. (“Sweeney”) dated August 12, 2016 as it appears on the Kaplan Fox
7 email server.

8 3. Attached hereto as **Exhibit B** is a true and correct printout of email correspondence with
9 Sweeney dated August 15, 2016 as it appears on the Kaplan Fox email server.

10 4. Attached hereto as **Exhibit C** is a true and correct printout of email correspondence with
11 Sweeney dated August 29, 2016 as it appears on the Kaplan Fox email server.

12 5. On September 6, 2016 I mailed a copy of plaintiffs’ draft motion for sanctions, later filed
13 as ECF No. 209 (the “Sanctions Motion”), to Sweeney via U.S. Mail to the address provided on the
14 court docket.

15 6. I maintain the files for this action at Kaplan Fox and as of the date of the declaration, I
16 am not aware of the draft Sanctions Motion being returned as undeliverable.

17 7. As of the date of the declaration, I am not aware of Sweeney identifying any errata to his
18 deposition transcript.

19 8. September 29, 2016 I served the PACER-stamped Sanctions Motions and the supporting
20 documents [ECF Nos. 209, 209-1, 209-2, and 209-3] on Sweeney via E-mail and U.S. First Class Mail.
21 Attached hereto as **Exhibit D** is a true and correct printout of the related email correspondence with Mr.
22 Sweeney as it appears on the Kaplan Fox email server.
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9. I am not aware of Kaplan Fox receiving any response from Sweeney to the Sanctions Motion other than Sweeney’s acknowledgement of receipt evidenced in Exhibit D.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 20th day of October, 2016, in New York, New York.

/s/ Wilfred Gomes
Wilfred Gomes

ATTESTATION OF E-FILED SIGNATURE

I, Laurence D. King, court-appointed interim co-lead counsel for the proposed Class, am the ECF User whose ID and password are being used to file this Declaration of Wilfred Gomes. In compliance with Civil L.R. 5-1(i)(3), I hereby attest that Mr. Gomes has concurred in this filing.

/s/ Laurence D. King

Laurence D. King

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Exhibit A

From: David Straite
Sent: Friday, August 12, 2016 1:00 PM
To: 'patrick@sweeneylegalgroup.com'
Cc: 'Patrick Sweeney'; 'Jordan Elias'
Subject: RE: In re Yahoo Mail Litigation, 13-cv-4980-LHK (N.D. Cal.)
Attachments: 2016-08-11 Declaration in Support of Pls' Response to Sweeney Objectionpdf

Dear Mr. Sweeney,

Attached is the supporting declaration mentioned below.

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

From: David Straite
Sent: Friday, August 12, 2016 12:59 PM
To: 'patrick@sweeneylegalgroup.com'
Cc: 'Patrick Sweeney'; 'Jordan Elias'
Subject: In re Yahoo Mail Litigation, 13-cv-4980-LHK (N.D. Cal.)

Dear Mr. Sweeney,

By this email we are serving the following documents, which were filed last night:

1. Plaintiffs' Response to Objection to Class Settlement (ECF No. 197)
2. Defendant's Joinder in Response to Objection to Class Settlement (ECF No. 198)

Due to its file size, I will send the supporting declaration (ECF No. 197-1 through 197-7) by separate email.

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

Exhibit B

From: David Straite
Sent: Monday, August 15, 2016 10:23 AM
To: 'Patrick Sweeney'
Subject: RE: In re Yahoo Mail Litigation, 13-cv-4980-LHK (N.D. Cal.)
Attachments: Sweeney, Patrick 080516.pdf

Mr. Sweeney,

attached is the deposition transcript for your review. We are processing the witness fee.

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

From: Patrick Sweeney [mailto:patrickshanesweeney@gmail.com]
Sent: Saturday, August 13, 2016 1:24 PM
To: David Straite
Subject: Re: In re Yahoo Mail Litigation, 13-cv-4980-LHK (N.D. Cal.)

Also please send me a copy of my repo so I can review for accuracy

Patrick S. Sweeney

On Fri, Aug 12, 2016 at 12:36 PM, Patrick Sweeney <patrickshanesweeney@gmail.com> wrote:

David,

Could you send my witness fee to

13400 East Bay Road
Manitowish Waters 54545

Thank You,

Patrick

Patrick S. Sweeney

Wisconsin Office

2590 Richardson Street
Madison, WI 53711.
Ph. [\(561\)-395-0000](tel:(561)395-0000)
Fx. [\(561\)-395-9093](tel:(561)395-9093)
Cell: [\(310\)-339-0548](tel:(310)339-0548)

Florida Office

750 South Dixie Highway
Boca Raton, FL 33432
Ph. [\(561\)-395-0000](tel:(561)395-0000)
Fx. [\(561\)-395-9093](tel:(561)395-9093)
Cell: [\(310\)-339-0548](tel:(310)339-0548)

On Fri, Aug 12, 2016 at 12:00 PM, David Straite <dstraite@kaplanfox.com> wrote:

Dear Mr. Sweeney,

Attached is the supporting declaration mentioned below.

Regards,

David A. Straite

Kaplan Fox & Kilsheimer LLP

850 Third Avenue

New York, NY 10022

Tel. [+1.212.687.1980](tel:+12126871980)

Fax [+1.212.687.7714](tel:+12126877714)

From: David Straite

Sent: Friday, August 12, 2016 12:59 PM

To: 'patrick@sweeneylegalgroup.com' <patrick@sweeneylegalgroup.com>

Cc: 'Patrick Sweeney' <patrickshanesweeney@gmail.com>; 'Jordan Elias' <je@girardgibbs.com>

Subject: In re Yahoo Mail Litigation, 13-cv-4980-LHK (N.D. Cal.)

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Due to its file size, I will send the supporting declaration (ECF No. 197-1 through 197-7) by separate email.

Regards,

David A. Straite

Kaplan Fox & Kilsheimer LLP

850 Third Avenue

New York, NY 10022

Tel. [+1.212.687.1980](tel:+12126871980)

Fax [+1.212.687.7714](tel:+12126877714)

Exhibit C

From: David Straite
Sent: Monday, August 29, 2016 10:35 AM
To: 'Patrick Sweeney'
Cc: 'Patrick Sweeney'
Subject: In re Yahoo Mail Litigation, 13-cv-4980-LHK (N.D. Cal.)
Attachments: Yahoo -- ORDER granting final approval and attorney fees 25 AUG 2016.pdf; Yahoo -- JUDGMENT granting final approval and closing case 25 AUG 2016.pdf

Dear Patrick,

please see attached Judgment and Order of the N.D. Cal. approving motions for final approval of the Yahoo Mail settlement and fees and expenses. Please let me know if you have any questions.

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

From: David Straite
Sent: Tuesday, August 16, 2016 4:42 PM
To: Patrick Sweeney
Subject: RE: In re Yahoo Mail Litigation, 13-cv-4980-LHK (N.D. Cal.)

Patrick, it was in the out-box but we intercepted and re-addressed it as indicated below. Please let us know if it does not arrive.

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

From: Patrick Sweeney [<mailto:patrick@sweeneylegalgroup.com>]
Sent: Tuesday, August 16, 2016 3:50 PM
To: David Straite <dstraite@kaplanfox.com>
Subject: Re: In re Yahoo Mail Litigation, 13-cv-4980-LHK (N.D. Cal.)

David,
If you haven't sent the witness fee yet please send it to

Patrick Sweeney
General Delivery
Manitowish Waters 54545

If mailed to the other address it will be returned I am told. Thank You.

Patrick

Patrick S. Sweeney

Sweeney Legal Group, S.C.

Wisconsin Office

2590 Richardson Street

Madison, WI 53711

Cell: (310)-339-0548

patrick@sweeneylegalgroup.com

Florida Office

750 South Dixie Highway

Boca Raton, FL 33432

Ph. 561-395-0000

Fx 561-395-9093

Cell: (310)-339-0548

patrick@sweeneylegalgroup.com

CONFIDENTIALITY NOTICE: This electronic transmission (including any files attached hereto) contains information that is legally privileged, confidential, and exempt from disclosure. It is intended for use only by the individual or entity named above. If you are not the intended recipient or an employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any disclosure, dissemination, copying, distribution, or the taking of any action in reliance on the contents of this confidential information is strictly prohibited. If you have received this communication in error, please destroy it and immediately notify me by email. Thank you.

On Fri, Aug 12, 2016 at 3:23 PM, Patrick Sweeney <patrick@sweeneylegalgroup.com> wrote:

David approximately 200 miles door to door x 57.5= \$115 =\$40 per diem
=\$155 -\$20=\$135

Patrick S. Sweeney

Sweeney Legal Group

Wisconsin Office

2590 Richardson Street

Madison, WI 53711

Cell: [\(310\)-339-0548](tel:(310)339-0548)

patrick@sweeneylegalgroup.com

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750 South Dixie Highway

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Cell: [\(310\)-339-0548](tel:(310)339-0548)

patrick@sweeneylegalgroup.com

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On Fri, Aug 12, 2016 at 12:00 PM, David Straite <dstraite@kaplanfox.com> wrote:

Dear Mr. Sweeney,

Attached is the supporting declaration mentioned below.

Regards,

David A. Straite

Kaplan Fox & Kilsheimer LLP

850 Third Avenue

New York, NY 10022

Tel. [+1.212.687.1980](tel:+12126871980)

Fax [+1.212.687.7714](tel:+12126877714)

From: David Straite

Sent: Friday, August 12, 2016 12:59 PM

To: 'patrick@sweeneylegalgroup.com' <patrick@sweeneylegalgroup.com>

Cc: 'Patrick Sweeney' <patrickshanesweeney@gmail.com>; 'Jordan Elias' <je@girardgibbs.com>

Subject: In re Yahoo Mail Litigation, 13-cv-4980-LHK (N.D. Cal.)

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2. Defendant's Joinder in Response to Objection to Class Settlement (ECF No. 198)

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Regards,

David A. Straite

Kaplan Fox & Kilsheimer LLP

850 Third Avenue

New York, NY 10022

Tel. [+1.212.687.1980](tel:+12126871980)

Fax [+1.212.687.7714](tel:+12126877714)

Exhibit D

From: Wilfred Gomes
Sent: Thursday, September 29, 2016 9:26 PM
To: David Straite
Subject: Fwd: In re Yahoo Mail Litigation, No. 5:13-cv-04980-LHK

FYI. I'm sending the courtesy copies anyway because the cos says so.

Sent from my Sprint Samsung Galaxy S7 edge.

----- Original message -----

From: Patrick Sweeney <patrick@sweeneylegalgroup.com>
Date: 9/29/16 7:13 PM (GMT-05:00)
To: Wilfred Gomes <wgomes@kaplanfox.com>
Subject: Re: In re Yahoo Mail Litigation, No. 5:13-cv-04980-LHK

Wilfred

If you haven't sent the hard copies yet-then don't.

I accept service via your email.

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Patrick S. Sweeney

Sweeney Legal Group

Wisconsin Office

6666 Odana Road

Suite 116

Madison, WI 53719

Cell: (310)-339-0548

patrick@sweeneylegalgroup.com

Florida Office

750 South Dixie Highway

Boca Raton, FL 33432

Ph. 561-395-0000

Fx 561-395-9093

Cell: (310)-339-0548

patrick@sweeneylegalgroup.com

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On Thu, Sep 29, 2016 at 5:36 PM, Wilfred Gomes <wgomes@kaplanfox.com> wrote:

Mr. Sweeney,

Attached are courtesy copies of the Motion for Sanctions and supporting papers filed with the Court earlier today. Hard copies of the same will also be delivered to you by U.S. First-Class Mail.

Sincerely,

Wilfred Gomes

Paralegal

Kaplan Fox & Kilsheimer LLP

850 Third Avenue, 14th Floor

New York, New York 10022

Telephone: [\(212\) 687-1980](tel:(212)687-1980)

Facsimile: [\(212\) 687-7714](tel:(212)687-7714)

Email: wgomes@kaplanfox.com

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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*

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
ffox@kaplanfox.com
dstraite@kaplanfox.com

19 **UNITED STATES DISTRICT COURT**
20 **NORTHERN DISTRICT OF CALIFORNIA**
21 **SAN JOSE DIVISION**

22 IN RE YAHOO MAIL LITIGATION

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

24 **CERTIFICATE OF SERVICE**

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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 October 20, 2016, I served true and correct copies of the following documents:

1. **PLAINTIFFS' REPLY IN FURTHER SUPPORT OF MOTION FOR SANCTIONS ON OBJECTOR PATRICK S. SWEENEY; and**
2. **DECLARATION OF WILFRED GOMES IN SUPPORT OF PLAINTIFFS' 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: October 20, 2016
New York, New York

/s/ Wilfred Gomes
Wilfred Gomes