

1 Scott D. Baker (SBN 84923)
Donald P. Rubenstein (SBN 121034)
2 Michele Floyd (SBN 163031)
Kirsten J. Daru (SBN 215346)
3 REED SMITH LLP
Two Embarcadero Center, Suite 2000
4 San Francisco, CA 94111-3922

5 **Mailing Address:**
P.O. Box 7936
6 San Francisco, CA 94120-7936

7 Telephone: 415.543.8700
8 Facsimile: 415.391.8269

9 Attorneys for Defendant
Yahoo! Inc.

E-FILED - 8/8/07

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 ROBERT ANTHONY, individually and on
behalf of others similarly situated,

13 Plaintiff,

14 vs.

15 YAHOO! INC., a Delaware corporation,

16 Defendant.

No.: C05 04175 RMW

**{} ORDER RE:
PRELIMINARY APPROVAL OF
STIPULATION OF SETTLEMENT AND
APPROVAL OF NOTICE OF PENDENCY
OF SETTLEMENT OF CLASS ACTION
TO CLASS MEMBERS**

Date: August 3, 2007
Time: 9:00 a.m.
Compl. Filed: October 13, 2005
Trial Date:
Disc. Cut-Off:

Honorable Ronald M. Whyte

17
18
19
20
21
22
23 Plaintiff's Motion for Preliminary Approval of Class Action Settlement (the "Motion") came
24 before the Court on August 3, 2007. Having considered the Motion, the Stipulation and Settlement
25 Agreement, including the Exhibits attached thereto (collectively, the "Agreement"), and all other
26 matters submitted concerning the Motion, the Court hereby preliminarily finds as follows:

27 1. On October 12, 2005., the initial complaint in this action was filed. The action is
28 entitled *Anthony v. Yahoo!, Inc.* Case No. C-05-04175, United District Court for the Northern

REED SMITH LLP
A limited liability partnership formed in the State of Delaware

1 District of California, San Jose Division, Case No, C 05-04175 (the “Action”).

2 2. In the Action, Robert Anthony (“Plaintiff”) sought to represent a nationwide class
3 challenging certain aspects of Yahoo!, Inc.’s (“Yahoo!”)s online dating service known as Yahoo!
4 Personals. Specifically, Plaintiff asserted claims for Breach of the Implied Covenant of Good Faith
5 and Fair Dealing (Count I), Fraud (Count II), Negligent Misrepresentation (Count III) and
6 Deceptive and Unfair Trade Practices Pursuant to Florida Statute §501.204, *et. seq.* (Count IV). The
7 specific actions challenged are described in more detail in Plaintiff’s Second Amended Complaint.

8 3. Yahoo! has denied and continues to deny all claims and allegations of wrongdoing
9 asserted in the Action and has substantial factual and legal defenses to all claims alleged in the
10 Action. Yahoo! has maintained and continues to maintain that it has acted properly and in
11 accordance with governing law and that Plaintiff and the Class Members have not suffered any
12 damage. Nonetheless, Yahoo! has concluded that further conduct of the Action would be protracted
13 and expensive, and that it is desirable that the Action be fully and finally settled in the manner and
14 upon the terms set forth in the Agreement. Neither the Agreement, nor any of its terms or
15 provisions, nor any of the negotiations connected with it, nor any act performed or documents
16 executed pursuant hereto, shall be construed as an admission or concession by Yahoo! of any
17 violation of law. To the contrary, Yahoo! has denied and continues to deny each and every
18 allegation of liability and wrongdoing.

19 4. After conducting a significant investigation into the facts and law, including
20 reviewing extensive information, interviewing and retaining an independent consultant, interviewing
21 and deposing witnesses and engaging in extensive settlement discussions with Yahoo!, supervised
22 by the Honorable Edward Infante (Ret), the Class Representative and Class Counsel (as defined in
23 the Agreement) have concluded that a settlement according to the terms and conditions set forth in
24 the Agreement is adequate and reasonable, and in the best interest of the Class Representative and
25 the Class (as defined in the Agreement).

26 5. This Court has jurisdiction over the subject matter herein and personal jurisdiction
27 over Plaintiff and Yahoo! Pending resolution of the settlement proceedings, this Court hereby
28 asserts jurisdiction over all Class Members as defined in Paragraph 11 of this Order for purposes of

1 effecting this settlement and releasing and barring litigation of their claims against Yahoo!

2 6. The proposed settlement embodied in the Agreement appears to have been negotiated
3 at arm’s-length and is preliminarily determined to be fair, reasonable, adequate, and in the best
4 interest of the Class for settlement purposes. The proposed settlement was negotiated over the
5 course of multiple mediation sessions.

6 7. The proposed settlement embodied in the Agreement is sufficient to warrant:
7 (a) notice thereof to the members of the Class and (b) a full hearing on the settlement.

8 8. The Class Notice set forth in Paragraph 14 below complies fully with the
9 requirements of Federal Rule of Civil Procedure 23 and due process, constitutes the best notice
10 practicable under the circumstances, and is due and sufficient notice to all Class Members entitled to
11 notice of the proposed settlement of the Action.

12 9. Preliminary Approval of Settlement. The settlement as set forth in the Agreement is
13 preliminarily determined to be fair, reasonable and adequate, and is preliminarily approved as in the
14 best interest of the Class. However, the Court’s preliminary approval of the settlement is not to be
15 deemed an admission of liability or fault by Yahoo! or by any other Person, or a finding of the
16 validity of any claims asserted in this litigation, or of any wrongdoing or of any violation of law by
17 Yahoo!. The proposed settlement is not a concession and shall not be used as an admission of any
18 fault or omission by Yahoo! or any other Person or entity. Further, the proposed settlement is not a
19 concession and shall not be used as an admission of any a lack of merit in the claims by Plaintiff or
20 any Class Member. Neither the terms of the settlement nor any related document shall be offered or
21 received as evidence in any civil, criminal, or administrative action or proceeding, other than such
22 proceedings which may be necessary to consummate or enforce the terms of the Agreement, except
23 that Yahoo! may file this Order in any action that may be brought against it in order to support a
24 defense or counterclaim based on principles or *res judicata*, collateral estoppel, release, good faith
25 settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or
26 similar defense or counterclaim.

27 10. Stay. It is hereby ordered that all proceedings in the Action shall be stayed, except
28 such actions as may be necessary to implement the Agreement and this Order, pending further

REED SMITH LLP
A limited liability partnership formed in the State of Delaware

1 proceedings in connection with the effectuation of the proposed settlement.

2 11. Preliminary Certification of the Class. The following class (the “Class” or “Class
3 Members”) is conditionally certified for settlement purposes only: all paid subscribers in the United
4 States to Yahoo! Personals (including Yahoo! Personals Premier) between October 1, 2004 and the
5 date of preliminary approval of this Settlement by the Court who do not timely and properly exclude
6 themselves from the terms of the Agreement.

7 12. Designation of Class Counsel. The following law firms are appointed jointly as Class
8 Counsel: (i) Freidin & Dobrinsky, P.A., and (ii) the McNulty Law Firm.

9 13. Final Approval Hearing. A final approval hearing (the “Final Approval Hearing”)
10 will be held on November 15, 2007 at 9:00 a.m. before this Court, in the Courtroom of the
11 Honorable Ronald M. Whyte of the United States District Court, located at 280 South 1st Street, San
12 Jose, California 95113 to determine: (1) whether the Class shall be certified as a class for settlement
13 purposes; (2) whether the proposed settlement, as set forth in the Agreement on file with the Court,
14 should be approved as fair, reasonable, adequate and in the best interests of Class Members;
15 (3) whether a final order and judgment should be entered approving the Agreement, dismissing the
16 Action with prejudice and on the merits; (4) whether Class Members should be bound by the releases
17 set forth in the Agreement; (5) whether Class Members should be subject to a permanent injunction
18 which, among other things, bars Class Members from filing, commencing, prosecuting, intervening
19 in, or participating as class members in, any lawsuits in any jurisdiction based on or relating to the
20 claims and causes of action, or the facts and circumstances related thereto, in this Action and/or the
21 Released Claims (as defined in the Agreement); and (6) whether the Court should approve the
22 application of Class Counsel for payment of attorneys’ fees, costs and expenses.

23 14. Notice. The Claims Administrator (The Garden City Group, Inc. as defined in the
24 Agreement) is hereby appointed by the Court as the party responsible for administration of this
25 settlement. The Claims Administrator, among other things, shall be responsible for preparing and
26 sending via electronic mail (“e-mail”) the Notice of Pendency of Class Action, Proposed Settlement
27 and Proposed Hearing Date for Court Approval (hereinafter “Notice”) in the form attached to the
28 Agreement as Exhibit C; in the event that the Claims Administrator receives e-mail delivery failure

1 notifications after sending the Notice to primary e-mail address of Class Members known to Yahoo!,
 2 the Claims Administrator is to send a postcard notice to those Class Members via U.S. Mail at the
 3 mailing address of those Class Members last known to Yahoo!; keeping records of Class Members
 4 who opt out of the settlement; distributing the Settlement Fund as set forth herein, and such other
 5 tasks as the parties mutually agree that the Claims Administrator should perform. Any claim or
 6 demand by Class Members against Yahoo! or the Claims Administrator arising out of or in
 7 connection with its or their performance of these responsibilities shall be limited to seeking, as the
 8 sole and exclusive remedy, the specific performance of these responsibilities. On or before thirty
 9 (30) days after the date of this Order, the Claims Administrator shall cause a copy of the Notice to be
 10 sent to all Class Members via electronic mail (e-mail), using the most current, primary e-mail
 11 address in Defendant's records. In the event the Claims Administrator receives an e-mail delivery
 12 failure notification after sending the Notice to class members' primary e-mail address known to
 13 Yahoo! for any particular Class Member, the Claims Administrator is to cause a postcard
 14 notification to be sent to that Class Member or Class Members via U.S. Mail at the mailing address
 15 of that Class Member or Class Members last known to Yahoo! The date on which the Claims
 16 Administrator first sends the Notice is referred to as the Notice Date. In the event the procedures in
 17 this paragraph are followed and the intended recipient of a Notice still does not receive the Notice,
 18 the intended recipient shall be deemed to be a Settlement Class Member but, absent the submission
 19 of a timely and valid Claim Form within thirty (30) days of the Court's Final Approval Hearing, shall
 20 not be eligible to receive monetary compensation. In addition, the Claims Administrator shall
 21 maintain a web site, which shall provide Class Members with current information regarding the
 22 status of the approval process and a downloadable copy of the Notice.

23 15. Deadline to Submit Valid Claim Forms/Dispute Resolution Process. The deadline for
 24 Class Members to submit completed Claim Forms to the Claims Administrator, as explained on the
 25 Claim Form attached to the Settlement Agreement as Exhibit A, is thirty (30) days after the Court's
 26 Final Approval Hearing ("Claim Form Deadline"). The Claim Forms must be postmarked, with all
 27 required fields completed, on or before thirty (30) days after the Court's Final Approval Hearing in
 28 order to be valid. In the event that the postmark is illegible, the Claim Form shall be deemed

REED SMITH LLP
A limited liability partnership formed in the State of Delaware

1 untimely unless it is received within five (5) days of the Claim Form Deadline. Only Authorized
2 Claimants, as that term is defined in the Settlement Agreement, are entitled to any payment after
3 submission of a valid and timely Claim Form.

4 The decision of the Claims Administrator with respect to the acceptance or denial of a claim
5 shall be final and binding unless the Class Member timely and properly invokes the dispute process
6 outlined herein. Settlement Class Members may dispute the denial of his or her claim, but may not
7 dispute the amount of money he or she claims is due to them pursuant to the Settlement, or other
8 aspects of the determination of the amount of money to which the Settlement Class Member may be
9 due, or for any other Settlement Class Member, or for the Class in general.

10 Notice of any dispute permitted in the preceding paragraph must specify the grounds for the
11 dispute and include any and all supporting documentation and must be mailed to the address
12 provided in the Notice, no later than the Claim Form Deadline. The Claims Administrator shall
13 promptly review the disputed Claim and supporting documentation, if any, and notify the Settlement
14 Class Member and Class Counsel of its determination.

15 16. Objections and Appearances. Only Class Members may object to the settlement as
16 embodied in the Agreement. Class Members who wish to object to the settlement must file with the
17 Court and serve on counsel for the Parties a written statement objecting to the settlement. Such
18 written statement must be filed with the Court and served on counsel for the Parties by no later than
19 forty-five (45) days after the Notice Date (the “Objection/Exclusion Deadline Date”).

20 No person shall be entitled to be heard at the Final Approval Hearing (whether individually
21 or through separate counsel) unless written notice of the person’s intention to appear at the Final
22 Approval Hearing shall have been filed with the Court and served on counsel for the Parties on or
23 before the Objection/Exclusion Deadline Date.

24 Any objection must contain (a) a heading which refers to the Action; (b) the objector’s name,
25 address and telephone number; (c) a statement indicating whether the objector intends to appear at
26 the Final Approval Hearing, either in person or through counsel, and, if through counsel, identifying
27 counsel by name, address, and phone number; (d) a statement of the grounds supporting the claim;
28 (e) a list of all persons who will be called to testify in support of the objection; (f) a list of other

REED SMITH LLP
A limited liability partnership formed in the State of Delaware

1 cases in which the objector or his or her counsel have appeared either as settlement objectors or as
2 counsel for objectors during the preceding five (5) years; (g) copies of any papers, briefs, or other
3 documents upon which the objection is based; and (h) the objector’s signature, even if he or she is
4 also represented by counsel. In the objection served upon Yahoo!, the objector must also include his
5 or her Yahoo! ID.

6 The date of the postmark on the return mailing envelope shall be the exclusive means used to
7 determine whether an objection and/or intention to appear has been timely submitted. In the event
8 that the postmark is illegible, the objection and/or intention to appear shall be deemed untimely
9 unless it is received within five (5) days of the Objection/Exclusion Deadline Date. Class Members
10 who fail to file and serve timely written objections in the manner specified above shall be deemed to
11 have waived any objections and shall be forever barred from making any objection to the Agreement
12 and the proposed settlement by appearing at the Final Approval Hearing, appeal, collateral attack, or
13 otherwise.

14 17. Exclusion from Class. Class Members who wish to exclude themselves from the
15 Class must submit a written statement requesting exclusion (“Request for Exclusion”) from the Class
16 on or before the Objection/Exclusion Deadline Date. Such Request for Exclusion must be
17 personally executed by the Class Member, contain the full name, address and telephone number of
18 the Class Person requesting exclusion along with the approximate dates and length of his or her paid
19 subscription to Yahoo! Personals, must be returned by registered or certified mail to the Claims
20 Administrator at the address specified in Exhibit C to the Agreement, and must be postmarked on or
21 before the Objection/Exclusion Deadline Date. The date of the postmark on the return mailing
22 envelope shall be the exclusive means used to determine whether a Request for Exclusion has been
23 timely submitted. In the event that the postmark is illegible, the Request for Exclusion shall be
24 deemed untimely unless it is received within five (5) days of the Objection/Exclusion Deadline Date.
25 Any Class Member who properly opts out will not be bound by the settlement. All Class Members
26 who do not request exclusion in the manner set forth in this Order and the Notice shall be bound by
27 any Final Judgment (as defined in the Agreement) entered pursuant to the Agreement, shall be
28 barred and enjoined, now and in the future, from asserting any and all of the Released Claims against

1 the Released Parties (as defined in the Agreement), and any such Class Member shall be
2 conclusively deemed to have released any and all such Released Claims.

3 18. Class Counsel Authorization. Class Counsel are authorized to act on behalf of Class
4 Members in such actions with respect to all acts or consents required by, or which may be given
5 pursuant to, the Agreement or such other acts as are reasonable and necessary to consummate the
6 proposed settlement through these approval proceedings.

7 19. Service of Papers: Yahoo! Counsel (as defined in the Agreement) and Class Counsel
8 shall serve on each other and on all other parties who have filed notices of appearance, at or before
9 the Final Fairness Hearing, any further documents in support of the proposed settlement, including
10 responses to any papers filed by Class Members.

11 20. Termination of Settlement. This Order shall become null and void, and shall be
12 without prejudice to the rights of the Parties, all of whom shall be restored to their respective
13 positions existing immediately as of February 2, 2007 if (i) the proposed settlement as set forth in the
14 Agreement is not finally approved by the Court, or if the Final Judgment (as defined in the
15 Agreement) does not become final pursuant to the terms of the Agreement; or (ii) the proposed
16 settlement as set forth in the Agreement is terminated in accordance with the Agreement or does not
17 become effective as required by the terms of the Agreement for any other reason. In such event, and
18 except as provided therein, the proposed settlement and Agreement shall become null and void and
19 be of no further force and effect, and neither the Agreement nor the Court's orders, including this
20 Order, shall be used or referred to for any purpose whatsoever.

21 21. Use of Order. If the settlement as set forth in the Agreement becomes final, then
22 Yahoo! may file this Order in any action that may be brought against it in order to support a defense
23 or counterclaim based on principles or *res judicata*, collateral estoppel, release, good faith
24 settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or
25 similar defense or counterclaim. This Order shall be of no force and effect if the proposed
26 settlement as set forth in the Agreement does not become final and shall not be construed as a
27 finding, determination or declaration of (i) any fault, wrongdoing or breach of duty on the part of
28 Yahoo!, (ii) a lack of merit in the claims by Plaintiff or any Class Member, (iii) the propriety or

1 impropriety of any relief requested in the complaints filed in the Action, (iv) a waiver or other
2 relinquishment by any party of any claim or defense, or (v) the certifiability or non-certifiability of
3 the class alleged in the operative complaints filed in the Action.

4 22. Weekends and Holidays. If any deadline set forth in this Order falls on a Saturday,
5 Sunday or federal holiday, then such deadline shall extend to the next business day.

6 23. Continuance of Hearing and Approval With Modifications. The Court reserves the
7 right to continue the Final Approval Hearing without further written notice to the Class. The Court
8 also reserves the right to approve the Settlement Agreement with such modifications as may be
9 agreed to by counsel for the Parties without requiring further notice to Class Members.

10 IT IS SO ORDERED.

11 Dated: 8/7/07



12 Honorable Ronald M. Whyte
13 Judge of the United States District Court

REED SMITH LLP
A limited liability partnership formed in the State of Delaware