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County of Santa Clara,  
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Reviewed By: R. Walker  
Case #17CV307054  
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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA

IN RE YAHOO! INC. SHAREHOLDER  
LITIGATION

Consolidated Action  
Lead Case No.: 17CV307054

Consolidated Action, Including:

**ORDER AFTER HEARINGS ON  
JANUARY 4, 2019**

Spain v. Mayer, et al.  
Superior Court of California, County of Santa  
Clara, Lead Case No. 17CV307054

**Final Fairness Hearing**

The LR Trust v. Mayer, et al.  
Superior Court of California, County of Santa  
Clara, Lead Case No. 17CV306525

Plumbers and Pipefitters National Pension Fund  
v. Mayer, et al.  
Superior Court of California, County of Santa  
Clara, Lead Case No. 17CV310992

The above-entitled matter came on regularly for hearing on January 4, 2019 at 9:00  
a.m. in Department 1 (Complex Civil Litigation), the Honorable Brian C. Walsh presiding.  
The Court reviewed and considered the written submission of all parties and issued a tentative  
ruling on January 3, 2019. No party contested the tentative ruling and no party appeared;  
therefore, the Court orders that the tentative ruling be adopted and incorporated herein as the  
Order of the Court, as follows:

1           These consolidated shareholder and derivative actions arise from the sale of the operating  
2 assets of Yahoo! Inc. (now Altaba Inc.) to Verizon Communications Inc., and from undisclosed  
3 security breaches that preceded the sale. The parties have reached a settlement, which the Court  
4 preliminarily approved on October 26, 2018. The factual and procedural background of the  
5 action and the Court’s analysis of the settlement are set forth in the order granting preliminary  
6 approval.

7           Before the Court are plaintiffs’ motions for final approval of the settlement and for  
8 approval of their attorney fees, costs, and service awards. Plaintiffs’ motions are unopposed.

9  
10 I. Legal Standard for Approving a Derivative Settlement

11           “A court reviewing a settlement agreement considers whether the proposed settlement is  
12 fair and reasonable in light of all relevant factors. [Citations.] A court reviews the settlement of  
13 a derivative suit as a means of protecting the interests of those who are not directly represented  
14 in the settlement negotiations.” (*Robbins v. Alibrandi* (2005) 127 Cal.App.4th 438, 445.) “The  
15 duty of a court reviewing a settlement of a class action provides a useful analogy because the  
16 court in such cases seeks to protect the members of the class who, like the corporation and non-  
17 named shareholders in a derivative suit, may have no independent representation and little  
18 control over the action.” (*Id.* at p. 449, fn. 2.) Thus, in evaluating the fairness of the derivative  
19 aspects of this settlement, the Court’s analysis is guided by relevant legal authorities regarding  
20 the approval of class action settlements.

21           Generally, “questions whether a settlement was fair and reasonable, whether notice to the  
22 class was adequate, ... and whether the attorney fee award was proper are matters addressed to  
23 the trial court’s broad discretion.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th  
24 224, 234-235, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, disapproved of on  
25 other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

26  
27           In determining whether a class settlement is fair, adequate and reasonable, the  
28 trial court should consider relevant factors, such as the strength of plaintiffs’ case,  
the risk, expense, complexity and likely duration of further litigation, ... the

1 amount offered in settlement, the extent of discovery completed and the stage of  
2 the proceedings, the experience and views of counsel, the presence of a  
3 governmental participant, and the reaction of the class members to the proposed  
settlement.

4 (*Wershba v. Apple Computer, Inc., supra*, 91 Cal.App.4th at pp. 244-245, internal citations and  
5 quotations omitted.)

6 The list of factors is not exclusive and the court is free to engage in a balancing and  
7 weighing of factors depending on the circumstances of each case. (*Wershba v. Apple Computer,*  
8 *Inc., supra*, 91 Cal.App.4th at p. 245.) The court must examine the “proposed settlement  
9 agreement to the extent necessary to reach a reasoned judgment that the agreement is not the  
10 product of fraud or overreaching by, or collusion between, the negotiating parties, and that the  
11 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, quoting  
12 *Dunk v. Ford Motor Co., supra*, 48 Cal.App.4th at p. 1801, internal quotation marks omitted.)

13  
14 The burden is on the proponent of the settlement to show that it is fair and  
15 reasonable. However “a presumption of fairness exists where: (1) the settlement  
16 is reached through arm’s-length bargaining; (2) investigation and discovery are  
sufficient to allow counsel and the court to act intelligently; (3) counsel is  
17 experienced in similar litigation; and (4) the percentage of objectors is small.”

18 (*Wershba v. Apple Computer, Inc., supra*, 91 Cal.App.4th at p. 245, citing *Dunk v. Ford Motor*  
*Co., supra*, 48 Cal.App.4th at p. 1802.)

19 The presumption does not permit the Court to “give rubber-stamp approval” to a  
20 settlement; in all cases, it must “independently and objectively analyze the evidence and  
21 circumstances before it in order to determine whether the settlement is in the best interests of  
22 those whose claims will be extinguished,” based on a sufficiently developed factual record.  
23 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.)

## 24 25 II. Terms and Notice of the Settlement

26 The parties’ agreement provides that \$29 million will be paid by the insurance carriers of  
27 the individual defendants and Verizon, as separately agreed by them, in settlement of this  
28 consolidated action, as well as the Delaware Action and the Federal Derivative Action (which

1 are discussed in the Court's order granting preliminary approval). Plaintiffs' counsel's fees and  
2 expenses, along with service awards to the named plaintiffs, will be deducted before the  
3 remaining funds are paid to Altaba. Pursuant to the settlement, the Delaware Action, the Federal  
4 Derivative Action, and the Writ Action (also discussed in the Court's prior order) will all be  
5 dismissed with prejudice. The putative class claims in this action will also be dismissed.

6 Plaintiffs' counsel will seek a fee award of up to 30 percent of the settlement, as well as  
7 up to \$250,000 in litigation expenses. Service awards of \$10,000 to plaintiff Spain and \$5,000 to  
8 the other named plaintiffs herein will also be requested. Altaba has further agreed to pay  
9 plaintiffs' counsel an additional \$2 million in fees for their work on the Proxy Litigation, in  
10 recognition of the benefits to Altaba and its shareholders that resulted from those efforts in the  
11 form of supplemental disclosures associated with the sale to Verizon.

12 In exchange for these benefits, the named plaintiffs have agreed to release, on behalf of  
13 themselves and derivatively on behalf of Altaba, all claims, rights, etc. that (i) they asserted in  
14 this action or (ii) that they or any other shareholder could have asserted derivatively, that Altaba  
15 could have asserted directly, or that the named plaintiffs could have asserted directly in any  
16 forum and that relate to a settling plaintiff's status as a Yahoo! stockholder and arise out of or are  
17 based upon the facts, matters, etc. alleged herein. Expressly excluded from the release are claims  
18 alleged in the Federal Customer and Securities Class Actions, and the claims in *Yahoo! Inc.*  
19 *Private Information Disclosure Cases* (Super. Ct. Orange County, JCCP 4895).

20 The notice process has now been completed, and there are no objections to the settlement.  
21 Defendants' counsel has submitted a declaration confirming that on October 31, 2018, the long-  
22 form notice approved by the Court was posted to Altaba's web site and the summary notice was  
23 filed with the SEC. The summary notice was also published twice in *Investor's Business Daily*,  
24 on November 5 and November 12.

25 At preliminary approval, the Court found that the proposed settlement provides a fair and  
26 reasonable compromise to plaintiffs' claims. It finds no reason to deviate from this finding now,  
27 especially considering that there are no objections. The Court consequently finds that the  
28 settlement is fair and reasonable for purposes of final approval.

1 III. Attorney Fees, Costs, and Incentive Awards

2 There are two aspects to the attorney fee award requested by plaintiffs, which defendants  
3 have agreed not to oppose. First, plaintiffs request an award of \$8,645,244, around thirty percent  
4 of the \$29 million monetary settlement. Second, they seek an additional \$2 million in fees for  
5 their efforts in the Proxy Litigation, which resulted in the provision of supplemental disclosures  
6 to shareholders before they voted to approve the sale to Verizon. Such a dual-pronged fee award  
7 is appropriate in a derivative case where the plaintiffs achieved both the creation of a common  
8 fund and a substantial non-monetary benefit for the corporation and its shareholders. (See  
9 *Cziraki v. Thunder Cats, Inc.* (2003) 111 Cal.App.4th 552, 554.)

10 “[A] court approving a negotiated fee in a derivative suit must determine if the fee is fair  
11 and reasonable ....” (*Robbins v. Alibrandi, supra*, 127 Cal.App.4th at pp. 448-449.) The court  
12 should “review the circumstances leading up to the settlement to ensure that the process was fair  
13 and free from fraud or collusion” and “consider whether the negotiated fee will result in  
14 unwarranted harm to the corporation and the shareholders, such as would be the situation if the  
15 cost of the settlement to the corporation [considering, inter alia, increased insurance premiums]  
16 far exceeded its value to the corporation and shareholders.” (*Id.* at pp. 449-450.) Here, the  
17 process preceding the settlement, described in the Court’s preliminary approval order, was robust  
18 and appears to have been fair and free from fraud or collusion. Counsel’s fee was negotiated  
19 separately from the substantive terms of the settlement with the assistance of Judge Weinstein.

20 These circumstances support approval of the negotiated fee, but the Court must still  
21 independently evaluate its fairness in light of the value of the settlement to Altaba and its  
22 shareholders.

23 The first aspect of the fee award is properly evaluated under the common fund doctrine.  
24 In California, fee awards of twenty-five to thirty-three percent are routinely approved under this  
25 doctrine (see *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 55 fn. 13); in Delaware,  
26 derivative actions settled after “meaningful litigation efforts” often yield a twenty-five percent  
27 award (see *Americas Mining Corp. v. Theriault* (Del. 2012) 51 A.3d 1213, 1259-1260). Here,  
28 plaintiffs’ fee request is supported by a lodestar figure of \$5,836,627, based on 9,510 hours spent

1 on the case by attorneys and other professionals with billing rates ranging from \$175 to \$1,250  
2 per hour. The fee request results in a multiplier of 1.83, accounting for the additional \$2 million  
3 award requested in connection with the Proxy Litigation. As a cross-check, the lodestar  
4 supports the fees requested, particularly given the lack of objections to the attorney fee request.  
5 (See *Laffitte v. Robert Half Intern. Inc.* (Cal. 2016) 1 Cal.5th 480, 488, 503-504 [trial court did  
6 not abuse its discretion in approving fee award of 1/3 of the common fund, cross-checked against  
7 a lodestar resulting in a multiplier of 2.03 to 2.13].) While the thirty percent requested is on the  
8 high side of percentage awards in derivative cases, here, the award is justified given the  
9 substantial time expended by counsel on the case, the significant risk of no recovery, and the  
10 good result achieved for the shareholders. A monetary recovery is particularly beneficial here,  
11 where Altaba is in the process of winding up its affairs and terminating its existence.

12 The second aspect of plaintiffs' fee request is analyzed under the substantial benefit  
13 doctrine. "Although [a] negotiated fee need not be perfectly consistent with the fees the court  
14 would award under the 'substantial benefit doctrine,' it must be in the same range." (*Robbins v.*  
15 *Alibrandi, supra*, 127 Cal.App.4th at p. 451.) The court may evaluate the value of the attorneys'  
16 work "in a number of ways, depending on factors such as the nature of the case, the nature of the  
17 settlement and court's familiarity with the litigation. The means of making this determination  
18 are best left to the trial court...." (*Id.* at p. 452.)

19 Here, Yahoo! agreed to issue several supplemental disclosures in response to plaintiffs'  
20 motion for a preliminary injunction in the Proxy Litigation. Several of these disclosures were  
21 material and support the \$2 million requested.

22 Plaintiffs also request \$182,520 in litigation expenses, below the \$250,000 estimate  
23 provided at preliminary approval. The costs are reasonable based on the summaries provided  
24 and are approved.

25 Finally, plaintiffs request service awards of \$10,000 to plaintiff Spain and \$5,000 to the  
26 other named plaintiffs. To support her request, plaintiff Spain submits a declaration in which she  
27 describes her efforts on the case, estimating she spent 95 hours on the matter. The two other  
28 named California plaintiffs also submit declarations, which reflect that they spent significantly

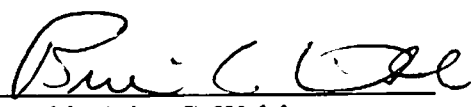
1 less time on the case than Spain. The Court finds that the class representatives are entitled to an  
2 enhancement award and the amounts requested are reasonable.

3  
4 IV. Conclusion and Order

5 Plaintiffs' motion for final approval of the settlement is GRANTED. Plaintiffs' motion  
6 for an award of attorney fees, expenses, and service awards is also GRANTED.

7 IT IS SO ORDERED.

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9 Dated: 1-8-19

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11 Honorable Brian C. Walsh  
12 Judge of the Superior Court  
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