

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Settlement Agreement") is entered into between Petitioner ROBERT ANDRÉ ROBITAILLE ("Petitioner"), individually and on behalf of the Settlement Class (defined below) on one hand, and YAHOO! INC. and YAHOO! CANADA CO. (collectively "the Yahoo! Respondents") on the other hand.

The Yahoo! Respondents shall be referred to herein collectively as "Respondents," and Petitioner and Respondents shall be referred to herein collectively as the "Parties."

RECITALS

WHEREAS, on or about December 13, 2005, Petitioner filed a *Motion to Authorize the Bringing of a Class Action & to Ascribe the Status of Representative* against the Respondents in the Superior Court of Quebec (CSM 500-06-000325-056) in which Petitioner alleges that he wishes to institute a class action ("Quebec Class Action") on behalf of the following group, of which he is a member, namely:

"All residents in Quebec who have paid for membership of YAHOO's online dating service, or any other group to be determined by the Court."

WHEREAS, the Quebec Class Action was assigned to the Honorable Louis Lacoursière S.C.J. (the "Court") for the purposes of case management and for the hearing of preliminary motions, authorization proceedings, proceedings on the merits and, as the case may be, settlement proceedings;

WHEREAS, the Quebec Class Action motion alleges various claims against the Respondents in relation to misrepresentations, as well as unfair and deceptive consumer practices in relation to Yahoo! Personals / Yahoo! Rencontres and Yahoo! Personals Premier;

WHEREAS, on May 27, 2010 Petitioner and Respondents reached an agreement in principle to settle the claims asserted in the Quebec Class Action;

WHEREAS, Petitioner and his counsel, Jeff Orenstein, CONSUMER LAW GROUP INC., ("Class Counsel"), have concluded that this Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class;

WHEREAS, Respondents deny any wrongdoing or liability, including denying any and all claims of liability or wrongdoing and all charges and allegations that have been asserted against them in the Quebec Class Action;

WHEREAS, Respondents have determined to enter into this Settlement Agreement on the terms and conditions set forth herein to halt the substantial expense that continues to be attendant to the Quebec Class Action;

WHEREAS, Petitioner has agreed to settle his claims, and those of the Settlement Class, upon the terms and conditions set forth herein after balancing the benefits that he and the Settlement Class will receive from this settlement against the uncertain outcome and risks from continued litigation, and concluding, with the advice and assistance of Class Counsel, that the Settlement Agreement is in the best interests of the Settlement Class;

WHEREAS, Petitioner and Respondents desire to promptly and fully resolve and settle with finality all of the claims asserted or that could have been asserted against Respondents in the Quebec Class Action or otherwise; and

WHEREAS, to accomplish that goal, Petitioner and Respondents have reached a settlement by and through their respective undersigned counsel on the terms and conditions set forth in this Settlement Agreement.

NOW, THEREFORE, Petitioner and Respondents, in consideration of the agreements herein described, and intending to be legally bound, do hereby mutually agree as follows:

PROPOSED CLASS FOR SETTLEMENT PURPOSES

1. Motion for Authorization for Settlement Purposes Only

- a) The Settlement Class shall consist of the following:

"All residents in Quebec who have paid for membership of YAHOO's online dating services, including Yahoo! Personals / Yahoo! Rencontres Premier, between October 1, 2004 and July 21, 2010, or any other group to be determined by the Court (the "Settlement Class")";

- b) The Settlement Class shall be represented by Petitioner Robert André Robitaille.

2. Settlement Purposes Only

Subject to the Court approval, Respondents consent to the *Motion to Authorize the Bringing of a Class Action and to Ascribe the Status of Representative for Settlement Purposes Only* and to the definition of the Settlement Class described at paragraph 1 herein for the purpose of the Settlement Agreement. In the event that the Settlement Agreement is terminated pursuant to its terms or is not approved in all material respects by the Court, or is reversed, vacated, or modified in any material respect by the Court or any other court, the Quebec Class Action shall proceed as though the Settlement Agreement never existed.

BENEFITS TO THE SETTLEMENT CLASS

3. Payment to Claimants

- a) Any Settlement Class Member who was a paid subscriber on Yahoo! Personals / Yahoo! Rencontres between October 1, 2004 and July 21, 2010 and who viewed profiles during his or her subscription period that he or she believes was posted for purposes other than dating, shall be entitled to receive a one-time payment up to CAN \$36. In order to make a claim, the class member shall complete a claim form ("Claim Form") and return the Claim Form to the Settlement Administrator

(as defined in paragraph 13 herein). The Claim Form shall be made available, in French and in English, to Settlement Class Members via Canada Post if they request one from the Settlement Administrator or via download from the Settlement's internet websites. Each Settlement Class Member who submits a valid claim shall be identified hereto as a "Claimant."

- b) The Claim Form will require Claimants to provide the following information: name, address and the Yahoo! account number. Claimants must also provide a statement indicating that they have viewed a profile during his or her subscription period that he or she believes was posted for the purpose other than dating. The form of the Claim Form is attached as **Exhibit A** hereto, both in French and in English.
- c) All Claim Forms must be received by the Settlement Administrator on or before a date to be determined by the parties, which will be at least a minimum of sixty (60) days after the publication of the Final Notice (as defined at paragraph 17), or such other date as set by the Court (the "Claims Expiration Date"). Any Claim Form that is received after the Claims Expiration Date, and any claim submission that fails to include any of the information referenced in paragraphs 3 a) and b) above, or that is sent to any address other than the one designated in the Claim Form, shall be invalid and the person(s) submitting such a Claim Form shall not be entitled to any relief provided pursuant to this Settlement Agreement.
- d) Subject to the limitations of paragraph 4, each Claimant who submits a valid claim shall be eligible to receive the one-time payment of up to CAN \$36 as provided at paragraph 3a).
- e) Within 60 days after the Claims Expiration Date as described in paragraph 3 c) above, each Claimant who has submitted a claim for which it is determined that a valid claim exists, shall be sent a cheque for the amount of up to CAN \$36 ("Settlement Payment Cheque") in accordance with paragraphs 3 and 4. Upon completion of the distribution of cheques, Respondents (or the Settlement

Administrator) shall provide Class Counsel with a list of the Claimants to whom cheques were distributed, and the amount of such cheques.

4. Total Settlement Costs

For purposes of this Settlement Agreement, the following definitions shall apply:

- a) **"Claimed Amount"** shall mean the sum of the dollar value of all valid claims submitted by Claimants;
- b) **"Settlement Costs"** shall mean costs of class notice, all of Class Counsel's Fees and Expenses, all amounts owed to the *Fonds d'aide aux recours collectifs*, and any other amounts awarded by the Court for any reason in the Quebec Class Action;
- c) **"Contribution Amount"** shall mean the sum of the Claimed Amount plus Settlement Costs;
- d) **"Settlement Cap"** shall mean the amount of CAN \$109,620.00
- e) **"Class Counsel Fees and Expenses"** shall mean the amount of CAN \$27,405.00, plus applicable taxes (\$1,370.25 GST + \$2,445.90 PST), and \$500.00 for disbursements, for a total amount of CAN \$31,721.15. Class Counsel Fees and Expenses shall include all legal fees and disbursements incurred by Class Counsel for all professional services rendered in the context of the Quebec Class Action, of the settlement negotiations, of the drafting of the proceedings and of the administration of the Settlement Agreement.

For each Claimant who submits a valid claim, Respondents shall provide a full payment of up to CAN \$36 (in accordance with the procedures set forth in paragraph 3 above), so long as providing such a full refund does not cause the Contribution Amount to exceed the Settlement Cap. If providing each Claimant with a full refund will cause the Contribution Amount to exceed the Settlement Cap, each Claimant shall be provided their pro rata share of the difference between the Settlement Cap and the Settlement Costs.

Respondents shall have no obligation to provide any amounts other than the Contribution Amount and the Cy Pres Contribution amount as set forth in paragraph 6 below.

5. Treatment of Uncashed Cheques

Settlement Payment Cheques must be cashed within six months after they are mailed to Claimants. If Settlement Payment Cheques are not cashed within six months, they will be void, and the Claimant will not be entitled to any further relief. If there are any uncashed cheques, the amounts attributable to those cheques will be distributed to a designated *cy pres* organization set forth in paragraph 7 below, within nine months after the Settlement Payment Cheques are distributed.

6. Cy Pres Contribution

Subject to Court approval, the balance of the settlement funds (the "Cy Pres Fund") will be contributed to a designated *cy pres* organization. The funding for the Cy Pres Fund shall come from two sources: uncashed cheques, as described in paragraph 5 above, and from the amount corresponding to the difference between the Settlement Cap amount and the Contribution Amount, as defined in paragraphs 4c) and d) above.

7. Taxation of Settlement Payments.

Petitioner and the Settlement Class Members acknowledge that none of the Respondents or any Released Parties as defined below have any responsibility for any filings with respect to, or payment of any taxes due on, any payments to Claimants discussed above or any funds that Settlement Class Counsel receive. Nothing herein shall constitute an admission or representation that any such taxes will or will not be due.

8. Class Counsel Fees and Expenses

Class Counsel Fees and Expenses, as defined in paragraph 4e), as well as the taxes pertaining thereto, will be submitted for approval by the Court upon a Motion presented by Class Counsel.

Respondent shall pay Class Counsel the approved Fees and Expenses by the Court within 5 days from the final judgment approving the settlement agreement.

RELEASES

9. Release of Claims

For purposes of this Settlement Agreement, the following definitions shall apply:

- a) **"Released Parties"** shall include the following persons and entities: each of the Yahoo! Respondents and all of their predecessors, successors, members, divisions, affiliates, imprints, parents, subsidiaries, and each and all of their respective current and former officers, directors, employees, affiliates, agents, consultants, attorneys, representatives, beneficiaries, heirs, and assigns.
- b) **"Released Claims"** shall mean any and all actual or potential claims, actions, causes of action, demands, obligations, or liabilities, whether arising under municipal, provincial, or federal law, whether by statute, contract, consumer protection law, civil law or equity, whether brought in by an individual, representative, or other capacity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated that have been, could have been, or could be brought and arise out of or are related in any way to the acts, omissions, facts, statements, matters, transactions, or occurrences that have been alleged or referred to in the Quebec Class Action.
- c) **"Releasing Parties"** shall mean the Petitioner and each Settlement Class Member, on behalf of themselves, their heirs, executors, administrators, successors, and assigns, and any person they represent.

By operation of the Judgment on the *Motion for Settlement Approval*, the Releasing Parties shall be deemed to have released the Released Parties from all Released Claims and will constitute a transaction within the meaning of Article 2631 C.C.Q.

10. Release of Unknown Claims

Without limiting the matters described in paragraph 10, the term “released claims” shall also include any unknown claims. For purposes of this paragraph, “unknown claims” means any released claims which Petitioner and/or any Settlement Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties which, if known by him, her or it, might have affected his, her or its settlement with and release of the Released Parties, or might have affected his, her or its decision not to object to this settlement.

SETTLEMENT APPROVAL PROCESS

11. Motion for Notice Approval and Preliminary Notice

The Parties agree to bring to the Court a *Motion for Notice Approval*. That motion will ask the Court, *inter alia*, to:

- a) Approve the publication of the notice announcing the Settlement Agreement (“Preliminary Notice”) in the form of **Exhibit B**;
- b) to obtain a date for the hearing on the *Motion for Settlement Approval* no later than 30 days after the entry by the Court of the Notice Approval Order, the Claims Administrator shall enclose a copy of the Notice attached hereto as **Exhibit B** to be sent to all class members via electronic mail (e-mail) using the primary e-mail address in Respondents’ records associated with the Yahoo! ID of the user. In the event that the Claims Administrator receives an e-mail delivery failure notification after sending the Notice via electronic mail for any particular Class Member, then the Class Administrator shall send a post-card Notice to the Class Member via Canada Post at the mailing address of that Class Member last known to Yahoo!. The post-card Notice attached as **Exhibit C** shall contain, at a minimum, a general description of the reason for the Notice and an address for the settlement website. If all the foregoing attempts to provide Notice via electronic mail and Canada Post mail fail, the intended recipient shall be deemed to be a Settlement Class Member.

12. Motion for Settlement Approval

The hearing on the *Motion for Settlement Approval* shall take place on the date determined by the Court in its decision on the *Motion for Notice Approval* but not sooner than thirty (30) days from the publication of the Preliminary Notice.

The Parties shall jointly present the *Motion for Settlement Approval* which will provide, *inter alia*, that:

- a) the *Motion to Authorize the Bringing of a Class Action & to Ascribe the Status of Representative* should be granted, conditionally to the Court's approval of the Settlement Agreement;
- b) the Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class;
- c) the class notices fully comply with the requirements of article 1006 of the *Quebec Code of Civil Procedure* and due process, constitute the best notice practicable under the circumstances, and are due and sufficient notice to all persons entitled to notice of the settlement of the Quebec Class Action;
- d) Petitioner and all Settlement Class Members (other than those who opt out of the Settlement as provided in this Settlement Agreement) are permanently enjoined and barred from commencing any action asserting any of the Released Claims, either directly, representatively, derivatively, or in any other capacity, whether by a complaint, counterclaim, defense, or otherwise, in any court, or in any agency or other authority or forum wherever located;
- e) the Court shall retain continuing jurisdiction over this action, the Parties, and all Settlement Class Members to determine all matters relating in any way to the proceedings in Superior Court of Québec file CSM 500-06-000325-056, and to the Settlement Agreement, including but not limited to their administration, implementation, interpretation, or enforcement.

SETTLEMENT ADMINISTRATION AND CLASS NOTIFICATION

13. Settlement Administrator

The Parties agree that Katherine Snow, a paralegal with the law firm of Lavery de Billy LLP, Counsel for the Yahoo! Respondents, shall be appointed – if approved by the Court – as the class action settlement administrator (“Settlement Administrator”).

The Settlement Administrator will be responsible for the Claims submitted by the Claimants and for the administration of the payments to be made pursuant to the Settlement Agreement.

The Settlement Administrator will file a final detailed report in the form of an Affidavit accounting of her administration of the Settlement funds.

14. Claim Dispute Process

Any disputes regarding the administration of the Settlement shall be addressed by and between Class Counsel and Counsel for the Respondents and, if not resolved, submitted to the Court for decision.

The decision of the Claims Administrator with respect to the acceptance or the denial of a claim shall be final and binding unless the Class Member timely and properly invokes the dispute process outlined in this paragraph. Settlement Class Members may dispute the denial of his or her claim, but may not dispute the amount of money he or she claims is due to them pursuant to this Agreement, or may be due, or for any other Settlement Class Member, or for the Class in general.

15. Notice of Claims Dispute

Notice of any dispute permitted in the preceding paragraph must specify the grounds for the dispute and include any and all supporting documentation and must be mailed to the address provided in the Notice, no later than ten (10) days following receipt of the denial of the claim by the Claims Administrator.

16. Resolution of Claim Dispute

The Third Party Claims Administrator designated by Defendant shall promptly review the disputed Claim and supporting documentation, if any, and notify the Settlement Class Member and Class Counsel of its determination.

17. Final notice

The Parties agree that following a decision by the Court on the *Motion for Settlement Approval*, a Class Notice shall be published essentially in the same manner and according to the same Notice procedure described in Paragraph 11 but by electronic mail only.

Publication of the Final Notice shall be completed within 30 days after a decision by the Court to approve the Settlement Agreement, provided that no appeal has been filed on said decision.

18. Rights of Exclusion

Settlement Class Members shall have until a date set by the Court (that is approximately thirty (30) days from the date of Preliminary Notice) to opt out of the Settlement Class. All Settlement Class Members who properly file a written request for exclusion from the Settlement Class shall be excluded from the Settlement Class, shall have no rights as Settlement Class Members pursuant to this Settlement Agreement, and shall receive no payments as provided herein. A request for exclusion must be in writing and in the form prescribed by **Exhibit D** and state the name, address, phone number and the Yahoo! account number of the person(s) seeking exclusion. Each request must also contain a signed statement that: "I/we hereby request that I/we be excluded from the proposed Settlement Class in the Yahoo! Personals / Yahoo! Rencontres litigation." The request must be mailed to the Settlement Administrator at the address provided in the Class Notice and must be mailed no later than thirty (30) days of the Preliminary Notice, or such other date as set by the Court. A request for exclusion that does not include all of the foregoing information, or that is sent to any address other than the one designated in the Class Notice, or that is not received within

the time specified, shall be invalid and the person(s) serving such a request shall be a member(s) of the Settlement Class and shall be bound as a Settlement Class Member(s) by the settlement of the Quebec Class Action, if approved. The Settlement Administrator shall forward copies of all requests for exclusion to all Counsel for Respondents and to Class Counsel no later than seven (7) days after the deadline for the Settlement Class Members to submit such requests.

19. Right to Object

Settlement Class Members shall have until a date set by the Court (that is approximately thirty (30) days from the date of Preliminary Notice) to object to the Settlement. Any Settlement Class Member who objects to the settlement may appear in person or through counsel, at his or her own expense, at the hearing on the *Motion to Authorize the Bringing of a Class Action and to Ascribe the Status of Representative* and on the *Motion for Settlement Approval* to present any evidence or argument that may be proper or relevant.

A Settlement Class Member who intends to object to the fairness of the Settlement must individually file any such objection with the Court no later than 30 (thirty) days after the Notice Date, and provide a copy of the objection to Jeffrey Orenstein, Consumer Law Group Inc., 1123 Clark St., 3rd Floor, Montreal, Quebec, H2Z 1K3, and to Jean Saint-Onge, Lavery, de Billy, 1 Place Ville-Marie, Suite 4000, Montreal, Quebec, H3B 4M4. Any objector to the Settlement must provide his or her full name, address, telephone number as well as his or her Yahoo! account number and state in writing all objections, the reasons for such objections, and whether the objector intends to appear at the *Motion for Settlement Approval Hearing* for the purposes of objecting to the Settlement.

MISCELLANEOUS PROVISIONS

20. Interpretation

This Settlement Agreement contains the entire agreement among the parties hereto and supersedes any prior negotiations, agreements or understandings among them. All terms are contractual and not mere recitals.

21. No Solicitation

The parties agree that neither they nor their counsel will solicit or otherwise encourage directly or indirectly Class Members to request exclusion from the Class, object to the Settlement, or appeal the Final Judgment.

22. Entire Agreement

No representations, warranties, or inducements have been made to any of the Settling Parties other than those representations, warranties and covenants contained in this Agreement. This Agreement and its exhibits shall constitute the entire agreement of the Settling Parties and may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by all parties to this Agreement or their successors-in-interest.

23. Materiality

The Settling parties have negotiated all of the terms and conditions of this Agreement at arms-length. All terms, conditions and exhibits are material and necessary to this Agreement and have been relied upon by the Settling Parties in entering into this Agreement.

24. Binding on Successors

This Agreement shall be binding upon and inure to the benefit of the Settling Parties and their representatives, heirs, successors and assigns.

25. Severability

In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement should the attorneys for the Settling Parties jointly elect to proceed as if such invalid, illegal or unenforceable provision had never been included in this Agreement.

26. Extensions

The Settling Parties may agree upon a reasonable extension of time for deadlines and dates reflected in this Agreement, without further notice and subject to Court approval if required.

27. Authorization

Class Counsel warrant and represent that they are authorized by Plaintiff, and the attorneys of record for Defendant warrant and represent that they are authorized by Defendant, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the parties agree to seek the assistance of the Court and in all cases all such documents, supplemental provisions and assistance of the Court shall be consistent with this Agreement.

28. No Recision on Grounds of Mistake

The Parties acknowledge that they have made their own investigations of the matters covered by this Settlement Agreement to the extent they have deemed it necessary to do so. The Parties shall cooperate to the extent necessary to respond to questions of

fact that may be raised by parties not party to this agreement during the approval process. The Parties agree that they will not seek to set aside any part of the Settlement Agreement on the grounds of mistake or error. Moreover, the Parties understand, agree, and expressly assume the risk that any fact not recited, contained, or embodied in the Settlement Agreement may turn out hereinafter to be other than, different from, or contrary to the facts now known to them or believed by them to be true, and further agree that the Settlement Agreement shall be effective in all respects notwithstanding and shall not be subject to termination, modification, or rescission by reason of any such difference in facts.

29. Amendment

This Settlement Agreement may be amended or modified only by a written agreement signed by the Parties or their counsel, or by a document filed with the Court and agreed to or not objected to by the Parties with the Court. Amendments and modifications may be made without notice to the Settlement Class unless notice is required by law or by the Court.

30. Construction

For the purpose of construing or interpreting this Settlement Agreement, the Parties agree that it is to be deemed to have been drafted equally by all Parties hereto and shall not be construed strictly for or against any party.

31. Effective Date

The effective date of this Settlement Agreement (the "Effective Date") shall occur five business days after the Judgment granting the *Motion for Settlement Approval* is deemed final.

32. Integration of Exhibits

The exhibits to this Settlement Agreement are an integral and material part of the settlement and are hereby incorporated and made a part of the Settlement Agreement.

33. Jurisdiction

The Court has jurisdiction over the Parties to this Settlement Agreement, the Settlement Class Members, the claims asserted in the Quebec Class Action, and the claims being released and compromised pursuant to the Settlement Agreement.

34. No Admissions

This Agreement and every stipulation and term contained herein is conditioned upon final approval of the Court and is made for settlement purposes only. Neither the act of, nor any provision contained in this Agreement, nor any action taken hereunder, shall constitute, or be construed as, any admission of the validity of any claim or any fact alleged in the Action or of any wrongdoing, fault, violation of law, or liability of any kind on the part of Defendant, or any admission by Defendant of any claim or allegation made in any action or proceeding by or against Defendant. This Agreement shall not be offered or be admissible in evidence by or against any Settling Party or cited or referred to in any action or proceeding, except in an action or proceeding brought to enforce its terms. Information provided by Defendant to Plaintiff and/or Plaintiff's Counsel in connection with settlement negotiations is for settlement purposes only. Nothing in this paragraph shall preclude Settling Parties from offering, or any Court from admitting in to evidence and considering, this Agreement in connection with any motion to stay or dismiss any action asserting a Released Claim, or a motion to enjoin any Class Member from prosecuting such an action.

35. Governing Law

This Settlement Agreement shall be governed by the laws of the Province of Quebec.

36. Language

The present Settlement Agreement has been drafted in English at the request of the Parties. Les parties ont volontairement choisi de rédiger la présente entente de règlement en anglais.

IN WITNESS WHEREOF, the undersigned have caused this Settlement Agreement to be executed as of the dates set forth below:

FOR THE PETITIONER:



Petitioner Robert André Robitaille

Date: October 22, 2011



Mtre Jeff Orenstein

Consumer Law Group Inc.
1123 Clark St.
3rd floor
Montreal, Quebec H2Z 1K3

Telephone: (514) CONSUMER [266-7863] Ext. 220

Toll Free: 1-888-909-7863

Fax: (514) 868-9690

Email: jorenstein@clg.org

Website: www.clg.org

Counsel for Petitioner Robert André Robitaille

Date: October 22, 2011

FOR THE RESPONDENTS:



Lavery, de Billy LLP

Mtre. Jean Saint-Onge
Mtre. Jean-Philippe Lincourt
1 Place Ville Marie – Suite 4000
Montréal QC H3B 4M4

*Counsel for Respondents Yahoo! Inc. and
Yahoo! Canada Inc.*

Date: November 2nd 2011