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May 20, 2008

BY LEXIS-NEXIS FILE & SERVE

The Honorable William B. Chandler III
Court of Chancery
34 The Circle
P.O. Box 424
Georgetown, DE 19947

Re: In re Yahoo! Shareholders Litigation, Cons. C.A. No. 3561-CC

Dear Chancellor Chandler:

We write on behalf of plaintiffs in further support of our application that plaintiffs' proposed First Amended Verified Consolidated Complaint (the "Complaint") be unsealed in its entirety. The telephonic hearing on plaintiffs' application is set for 10:00 a.m. this morning.

Defendants' opposition (the "Opposition"), filed late yesterday, is notable in several respects:

- It ignores the constitutional and common law standards for the sealing of public judicial records.
- It provides no factual justification for any of defendants' redactions – all six exhibits to the Complaint, 24 entire paragraphs of the Complaint, and portions of 12 other paragraphs.
- It ignores defendants' selective disclosure of their own confidential information, in a manner that mischaracterizes Yahoo internal documents, while redacting plaintiffs' filings, to suit defendants' public relations strategy.
- It falsely accuses plaintiffs' counsel of violating a Court Order.

- It advocates a gag order on communications with class members in a matter of public interest.

We address these issues below.

I. The Common Law Right of Access.

Defendants' Opposition ignores the legal doctrine governing the sealing of a class action complaint. "[T]he common law right of public access to judicial documents is firmly rooted in our nation's history." *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119 (2d Cir. 2006). Accordingly, "there is a strong presumption toward disclosure of court files and documents" and "[p]ublic disclosure is justified further by the First Amendment." *In re Bank One Securities Litig.*, 222 F.R.D. 582, (N.D. Ill. 2004) (citing *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 603 (1982)). *See also Underseal v. Underseal*, C.A. No. 2251-N, tr. at 12, Chandler, C. (Del. Ch. Sept. 8, 2006) ("We should apply, I think, instead a long predisposition of our common law and a strong fundamental belief in the open access to the courts and the records of the courts, a presumption that pervades our statutory and our constitutional law.") (Ex. A); *In re The Walt Disney Co. Deriv. Litig.*, C.A. No. 15452-NC, let. op. at 2, Chandler, C. (Del. Ch. Feb. 24, 2004) ("Such attempts to maintain secrecy as to the records of the Court would seem to be inconsistent with the common understanding of what belongs in the public court of record, to which all persons have the right of access and to its records according to long established usage and practice.") (Ex. B).

In a class action, the "right of public access is ***particularly compelling*** ... because many members of the 'public' are also plaintiffs in the class action. Accordingly, all the reasons we discussed in *Littlejohn* for the right of access to public records apply with even greater force here." *In re Cendant Corp.*, 260 F.3d 183, 193 (3d Cir. 2001) (emphasis added).

II. Defendants Fail to Articulate Any Specific Serious Injury from Public Disclosure of the Complaint.

Overcoming the strong presumption of public access requires a specified showing of serious injury:

> In order to override the common law right of access, the party seeking the closure of a hearing or the sealing of part of the judicial records bears ***the burden of showing that the material is the kind of information that courts will protect and that disclosure will work a clearly defined and serious injury to the party seeking closure. In delineating the injury to be prevented, specificity is essential.*** Broad allegations of harm, bereft of specific examples or articulated reasoning, are insufficient. . . .

Id. at 194 (emphasis added) (internal quotations omitted). A complaint will be unsealed if the party seeking to maintain confidentiality fails to provide support for a claim of injury and instead rests of the terms of a confidentiality stipulation. *In re Bank One*, 222 F.R.D. at 588.

Defendants make no effort to justify their wholesale redactions. They merely invoke their unilateral power under the Confidentiality Order to designate discovery material as confidential. They do not explain how unsealing any of the exhibits to the Complaint, or any of the redacted paragraphs, would work a cognizable harm on Yahoo or the defendant directors.

This Court has made clear that embarrassment from disclosure of evidence supporting a claimed breach of fiduciary duty works no cognizable injury – notwithstanding the pendency of a contest over corporate control. In the *Disney* litigation, this Court ordered the unsealing of the Court record, and rejected any suggestion that an unsolicited merger offer from Comcast Corp. was reason to maintain the confidentiality of discovery material that informed a claimed breach of fiduciary duty. *See In re Disney*, *supra*, let. op. at 2 ("[I]t appears to me that you seek to sanitize the public record, effectively maintaining a cloak of secrecy with respect to certain testimony and documents concerning the conduct of Disney officers and directors.").[1]

Yahoo's redactions here are of the same ilk. Defendants seek to impose secrecy over factual allegations and supporting documents that form the basis of plaintiffs' claims. Defendants redact all references to any discovery material about plaintiffs' claim that adoption of the change of control employee severance plans shortly after Microsoft's public merger proposal was an unreasonable defensive measure under *Unitrin, Inc. v. American General Corp.*, 651 A.2d 1361 (Del. 1995). Defendants also redact a variety of months-old information that goes to plaintiffs' broader claim about the defendants' actions to thwart Microsoft.

III. Defendants Waived Any Claim to Confidentiality By Selective Public Disclosure of Discovery Material.

Defendants' position suggests that any hearing must be held in a closed courtroom, and that any judicial opinion must be redacted. But that is not how defendants have litigated this case. *They only try to stifle public dissemination of the plaintiffs' side of the story.* When it suited Yahoo's public relations objectives, they publicly trumpeted and mischaracterized portions of the very documents they now claim must be shrouded in secrecy.

[1] The Court later ruled that certain letters written on behalf of dissident directors could be filed publicly. *See In re The Walt Disney Company Deriv. Litig.*, C.A. No. 15452-NC, let. op., Chandler, C. (Del. Ch. Aug. 31, 2004) (Ex. C).

For example, *the public version* of defendants' opposition to plaintiffs' motion for expedited proceedings contains the following sentence:

> 21. Moreover, even taking Plaintiffs' alleged estimation that the Severance Plans are worth between $462.4 million and $757.4 million (Margules Letter at 3), this constitutes only ***1.03% and 1.7%, respectively,*** of Microsoft's $44.6 billion bid for Yahoo!. . . .

(Ex. D) (emphasis in original). This statement is utterly false. Plaintiffs had not estimated the cost of the severance plans. The cited letter was redacted by defendants because it refers to numbers that defendants had generated (and plaintiffs hardly endorsed those numbers). (*See* Ex. E at 3) Defendants are trying to keep under seal the very document that contains the numbers defendants cherry-picked and disseminated for their own public relations purposes. (Compl. Ex. E)

Similarly, at oral argument on plaintiffs' motion to expedite, defendants took the liberty of publicly characterizing Yahoo board minutes they had produced just before the hearing and filed under seal. Defendants drew a completely unwarranted connection between funds earmarked by Microsoft to retain employees and certain Yahoo cost estimates to pay severance to terminated employees:

> The minutes point out that Microsoft has said and represented that it has earmarked $1.5 billion for employee retention at Yahoo!. Now, using the numbers that Mr. Reda uses, 460 to 750 million, Microsoft is not higher than Yahoo!; Microsoft is way higher than Yahoo!, perhaps even by a factor of two. And that appears at page 13 of the February 8th Yahoo! minutes. And oh, by the way, the Yahoo! Board was well aware of this, and considered this fact and then put it in the minutes when it adopted the severance plan.

(Ex. F at 22-23) Defendants now find it convenient to argue that any factual allegations relating to this subject must be kept secret.

Additionally, Yahoo recently filed an Amendment No. 1 to Form 10-K that contains the disclosure that "Compensia advised the Company and F.W. Cook & Co. advised the Compensation Committee with respect to the terms of the [severance] plans." (Ex. G) But what did they each advise? According to defendants, the public cannot be trusted with information on that subject.

Defendants' Opposition must be seen for what it is – an unsupported effort to continue a legally impermissible public relations strategy – disclose whatever defendants wish in whatever manner they wish, and suppress a competing version of the same events. Contrary to defendants' empty rhetoric, plaintiffs' application is not "designed to distract attention from the lack of merit of their case." (Opp. at 2) It is designed to focus

attention on the actual facts and the actual documents that support plaintiffs' claims, including the claim that adoption of the severance plans was a breach of fiduciary duty, and that the severance plans should be invalidated, so that any bid for Yahoo can maximize value for Yahoo shareholders.

IV. Plaintiffs Committed No Impropriety.

The best defense may be a good offense, but defendants' numerous accusations are legally and factually unsupported. They cannot prevent vindication of the common law right of access.

Defendants accuse plaintiffs' counsel of violating paragraph 19 of the Confidentiality Order by approaching the Court to seek the unsealing of the Complaint. (Opp. ¶¶ 3, 19) But paragraph 19 of the Confidentiality Order deals with motions to vacate a confidentiality designation. Plaintiffs' application is different. It seeks to vindicate the public right of access to judicial records. Moreover, defendants overlook that plaintiffs' Motion to Amend (filed three days before any proxy contest) specifically requested permission from defendants to file the Complaint publicly. Defendants ignored that request and made wholesale redactions, demonstrating the necessity of judicial intervention.

Defendants accuse plaintiffs' counsel of publicly disclosing confidential discovery material in violation of paragraph 5 of the Confidentiality Order. (Opp. ¶ 21) But plaintiffs have done no such thing. Our letter to the Court merely identified in the most general terms categories of information that had been redacted by defendants. The letter did not disclose or summarize any statement by any individual, or the content of any email. Plaintiffs have not disclosed any financial information not already disclosed by defendants. Defendants identify no out-of-court statement that discloses confidential information.

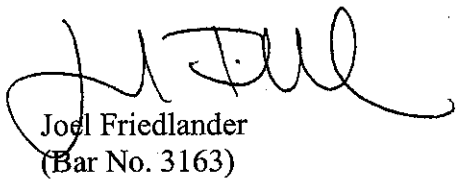
Defendants accuse plaintiffs of "run[ning] afoul of the long-standing Delaware practice of litigating cases in the court, and not in the press." (Opp. ¶ 5) Of course, Plaintiffs are diligently litigating this case in this Court. Defendants pretend to be unaware of Rule 3.6(b) of the Rules of Professional Conduct, which expressly authorizes lawyers to state publicly "the claim, offense or defense involved" and "information contained in a public record." Comment 1 to Rule 3.6 notes that "there are vital social interests served by the dissemination of information about events having legal consequences and about legal proceedings themselves. . . . [The public] has a legitimate interest in the conduct of judicial proceedings, particularly in matters of public concern."

Defendants take particular umbrage that *public versions* of Court documents are posted on the Bernstein Litowitz website. (Opp. ¶¶ 4, 13 & Ex. 1) It is standard practice for national class action firms to communicate with class members in that manner. Indeed, a federal court recently ordered Bernstein Litowitz to post promptly on their

firm's website all Court filings in a securities class action. *In re Worldcom, Inc. Sec. Litig.*, 2003 U.S. Dist LEXIS 8979, at *9 (S.D.N.Y. May 28, 2003) (Ex. H).

Finally, defendants accuse plaintiffs of filing an application "for emergency relief when there is, in fact, no emergency." (Opp. ¶ 23) Apparently, defendants think the looming proxy context, the intense public interest in this litigation, the swirl of events surrounding Yahoo, and the absence of any articulated basis for defendants' wholesale redactions are reasons why plaintiffs should do nothing. We take a different view of our responsibilities as lead counsel, and we appreciate that the Court scheduled a prompt hearing in this matter.

Respectfully,



Joel Friedlander
(Bar No. 3163)

cc: Register in Chancery (by e-filing)
Edward P. Welch, Esquire (by e-filing)
David C. McBride, Esquire (by e-filing)

EXHIBIT A

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

UNDERSEAL and UNDERSEAL,	:	
	:	
Plaintiffs	:	
	:	
vs.	:	Civil Action
	:	No. 2251-N
UNDERSEAL,	:	
	:	
Defendant.	:	

- - -

Chancery Court Chambers
34 The Circle
Georgetown, Delaware
Friday, September 8, 2006
11:00 a.m.

BEFORE: HON. WILLIAM B. CHANDLER III, CHANCELLOR.

TELECONFERENCE

CHANCERY COURT REPORTERS
414 Federal Street
Dover, Delaware 19901
(302) 739-3934

APPEARANCES:
(By telephone):

NEAL C. BELGAM, ESQ.
Blank, Rome LLP
For Plaintiff

J. TRAVIS LASTER, ESQ.
Abrams & Laster LLP
For Defendant

JOHN M. SEAMAN, ESQ.
Bouchard, Margules & Friedlander, P.A.
For Defendant

- - -

have a quick question as to perhaps the mechanics of how things will be unsealed. Would it be the case that the documents that are currently on the docket on the electronic docket will be made public or will we be asking Mr. Belgam to do something or provide public versions of documents? I'm not sure how it's going to physically be unsealed.

THE COURT: My thought is that the existing documents filed electronically through Lexis Nexis, that the sealing of those documents -- I may be mistaken about this, but I am under the impression that that could be removed and that those documents would actually become publicly accessible, for example, to anyone who walked into the Registers office to one of the public access terminals, and they would be able to view those documents once I order the seal to be removed.

Now, if anyone has a different impression, I'd like to hear it.

That silence tells me that no one has a different impression, so that, I think, answers your question, Mr. Seaman.

MR. SEAMAN: Thank you, Your Honor.

THE COURT: I have thought carefully

about this because I know Mr. Belgam, in his brief, has argued very strongly that the Court's initial decision to seal the record in this case on the basis of the finding of good cause for doing so still appertains today, and that that initial decision was correct and it continues to be correct, and there is a certain amount of, I think, underlying argument by Mr. Belgam, akin to stare decisis, that the original decision was correctly made and that the Court ought to stand by it and not revisit it.

To the extent that is an underlying thesis of Mr. Belgam's position, I am going to perhaps say more than I need to say because I think it is useful and beneficial for counsel, at least those on the line, and perhaps others who will learn from those on the line, the Court's thinking about orders that have sealed records in cases in the Court of Chancery.

We see applications to seal records and documents and complaints all the time. They are a matter of routine. I think that every day for the past two weeks I have had at least one per day; that is, one motion or application or letter asking me to seal a complaint so that it can be filed or asking me to seal particular documents. That is how regularly

we see them.

And we, as a court, tend to act on them in an accommodating way; that is, we try to accommodate the requests of Delaware counsel who the members of the Court rely upon to make applications only when there is truly good cause as defined under our rules and as has developed over the years in the form of the customs and practices of the Court. But that accommodation, it seems to me, sometimes is more generous than perhaps it should be.

So each member of the Court -- and I have polled each member of the court so that I can say this without it being speculation -- each member of the court views their decisions to seal the record as accommodating efforts and as efforts that are subject at all times to reconsideration.

We sign sealing orders, but they don't have any special value or weight at a later point in time if we are asked to reconsider them just because we granted them initially.

A prime example of that in my own case is in the Walt Disney litigation. I granted motions to seal the record in the Walt Disney case, but later in the course of the litigation, as it neared trial, I

unsealed significant portions of the record, over the objection of the company and over the objection of certain directors and officers of the company who wanted to maintain the confidentiality of certain documents principally because they were potentially embarrassing to certain officers and directors of the company. But that is not a valid reason under our law for sealing a record. So I ordered those documents to be unsealed.

On the other hand, there were documents in the Disney litigation that I have continued to maintain under seal because they genuinely are protectable because they involve confidential proprietary information. For example, there are documents that reveal Mr. Ovitz's and Mr. Eisner's and others social security numbers, their bank accounts and bank account numbers with certain institutions that they have business relationships with, and that obviously is information that, balancing the interests of the public in knowing that versus the interest of the individual and some privacy in sensitive matters of that kind, clearly weigh in favor of the latter interest. So I have continued the sealing.

I wanted, first of all, to tell you that the sealing of these matters is not something that just automatically ensures that it will remain forever sealed. Each member of this Court will revisit their decisions when there is a basis for doing so.

In this instance, I signed an ex parte order to seal. That comes with even less weight, in the minds of members of the Court, than an order that at least is the product of an adversarial process. So I am less inclined now to be persuaded by any initial decision than I would in other instances perhaps where there was a more adversarial process at work.

In addition, Bloomberg has moved to intervene, and I deny the motion to intervene because I do not see any purpose for intervening in the litigation. It has no real interest in the litigation. It has only an interest in having access to documents that it believes should be publicly available. For that, it does not need to intervene. It simply needs to make an application to the Court which happens all the time by representatives of the media.

But Bloomberg's underlying interest in

having access to the documents, it seems to me, outweighs the interests of the plaintiffs and the defendant here in maintaining confidentiality of the nature of this litigation and who the parties are that are involved in the litigation.

To the extent that the State of New Jersey, through its statutory law and through its regulatory agencies, has announced some public policy that seeks to protect the confidentiality of auction processes involving public utilities, that is a consideration that obviously the Court of Chancery in Delaware can and should consider in weighing the interests of whether to seal a record or not.

My own view, however, is that if the State of New Jersey views this as an important public policy -- that is, ensuring the confidentiality of an auction process involving a public utility in the State of New Jersey -- then I would encourage the policy makers and lawmakers of the fair Garden State to likewise provide that any litigation seeking to enforce confidentiality agreements that arise in those settings be brought in the courts of the Garden State, and that those court proceedings will be completely confidential and secret and not available to the

public for inspection. If that is a policy judgment that the leaders of New Jersey want to implement, they should implement it in New Jersey.

Delaware is not, in my opinion, the appropriate location to carry out a public policy judgment of the State of New Jersey. We should apply, I think, instead, a long predisposition of our common law and a strong fundamental belief in the open access to the courts and the records of the courts, a presumption that pervades our statutory and our constitutional law.

So I am reluctant to allow the avowed public policy determination of a sister state to, in a sense, trump or outweigh the strong common law and constitutional history of Delaware in favoring open access to the courts.

That is the reason why the argument, based on the public policy of New Jersey and its interests in protecting the confidentiality of auction proceedings involving public utilities, carries less weight in my mind than the constitutional, statutory and common law values of open access to the courts that prevails in Delaware.

Finally, my own view is that although

there might have been a legitimate purpose for sealing these record in this case at the outset when the auction process was still ongoing, that interest has become more attenuated now that the auction process is closed and there is apparently a winning bidder. That means that the regulatory process in New Jersey will now review and approve or disapprove this potential sale. And I believe, notwithstanding what Mr. Belgam has said, that some significant portion of that is going to have to be in the public eye. To that extent, there is even less reason to continue to seal this record.

Those are my reasons, counsel, not as succinct as I would like to have made them, but I think they capture my thinking for why it is appropriate for me now to unseal the record in this case.

With that, I appreciate your being available, and if there are no further questions for me, then we will recess Court.

MR. SEAMAN: Your Honor, this is John Seaman. Thank you very much for your time and your ruling on this so promptly. I think one of your comments earlier is something that I wanted to raise

EXHIBIT B

WILLIAM B. CHANDLER III
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OF THE
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February 24, 2004

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Re: *In re The Walt Disney Co. Derivative Litig.*
Civil Action No. 15452-NC

Dear Mr. Friedlander:

I have your February 23, 2004 letter requesting that I defer unsealing the record in this case until March 2, 2004. For the reasons that I stated during our telephone conference at approximately 9:00 p.m. last evening, I deny your request.

As you know, all pleadings and other papers, including deposition transcripts and exhibits, affidavits, expert reports, and briefs are filed with the Register in Chancery and become part of the *public* record of the proceedings before this Court. If counsel believe good cause exists for sealing part of the public record (for example, because an exhibit contains trade secrets, third-party confidential information, or non-public financial material), an application to file under seal may be made in accordance with Chancery Rule 5(g). Here, no reason

has been brought to my attention that justifies continuing to seal parts of the official court record in this case. Nor have you identified grounds for sealing plaintiffs' brief in opposition to defendants' motion to exclude Professor Deborah DeMott's January 30, 2004 expert report. Professor DeMott's report sets forth her opinions about whether the directors of Walt Disney breached their fiduciary duties of care and loyalty in connection with the selection, hiring and termination of Michael Ovitz as President of Walt Disney. Nothing in your February 23 letter, or in our telephone conference on the evening of February 22 explained how the expert report by Professor DeMott reveals confidential information. Instead, it appears to me that you seek to sanitize the public record, effectively maintaining a cloak of secrecy with respect to certain testimony and documents concerning the conduct of Disney officers and directors. The fact that your February 23 letter requests that the Court defer any action to unseal documents "until Tuesday, March 2, 2004" heightens my suspicion about your motive for seeking to maintain these records under seal.

All the papers, documents and exhibits filed with the clerk of this Court become public judicial records of this Court, and must be so treated. If I were to authorize the sealing of records in a case because they contained information that was potentially embarrassing or unflattering, I expect the Court would be inundated with applications by parties to seal portions of the records in virtually every case that is filed in this Court. Such attempts to maintain secrecy as to the records of the Court would seem to be inconsistent with the common understanding of what belongs to a public court of record, to which all persons have the right of access and to its records according to long established usage and practice. The very idea seems inconsistent with the concept of a public tribunal and would probably "be deemed repugnant to the genius of American institutions."

As I advised in my letter of February 19, I am directing that all documents in this case that have heretofore been marked as confidential and sealed to be unsealed. All future documents will be filed as a matter of public record unless a party moves to have a particular document sealed in accordance with Chancery Rule 5(g).

IT IS SO ORDERED.

Very truly yours,

/S/ William B. Chandler III

William B. Chandler III

WBCIII:meg

EXHIBIT C

WILLIAM B. CHANDLER III
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Re: In re The Walt Disney Company Derivative Litig.
Civil Action No. 15452-NC

Dear Counsel:

With the trial in this case scheduled to commence in six weeks, and the motion for summary judgment pending before the Court, I hope that we can keep side issues to a minimum. In that spirit, I write briefly to address the application of nominal defendant Walt Disney Company for a protective order allowing the company to designate as "confidential" and to prevent public filing and dissemination of three documents (the two Fleischer letters and the Gold letter) recently produced in discovery in this lawsuit. In addition, the Walt Disney Company has demanded the sealing of certain portions of exhibit 266 in which Mr. Eisner expressed unflattering opinions about certain individuals.

I deny both of the Company's applications. The application to seal certain portions of exhibit 266 is *denied*, and the application to designate as confidential and prevent public filing and dissemination of the Fleischer and Gold letters is also *denied.* The latter three documents (the Fleischer and Gold letters) are not Disney documents. Counsel for defendant Stanley Gold drafted two of the documents. The third document was authored by Gold himself. All three were produced in connection with the redeposition of defendant Roy E. Disney in this lawsuit. Having reviewed the letters, I see no basis under the rules of this Court for ordering that they be sealed or designated as confidential. Nor does any basis appear for the letters to be filed in redacted versions. Accordingly, the unredacted versions of the three documents should be produced to plaintiffs' counsel.

This same conclusion applies to exhibit 266. The fact that information is potentially embarrassing or unflattering is not a basis for the sealing of records in public litigation. Accordingly, the application of the Walt Disney Company for the designation as confidential or the sealing of the above-referenced documents is *denied.*

IT IS SO ORDERED.

Very truly yours,

/s/ William B. Chandler III

William B. Chandler III

WBCIII:meg

EXHIBIT D

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE YAHOO! INC. SHAREHOLDERS LITIGATION	CONSOL. C.A. No. 3561-CC
	PUBLIC VERSION

DATED: March 26, 2008

YAHOO! INC.'S AND INDIVIDUAL DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR EXPEDITED PROCEEDINGS

Defendant Yahoo! Inc. ("Yahoo!" or the "Company") and individual defendants Jerry Yang, Roy Bostock, Ron Burkle, Eric Hippeau, Vyomesh Joshi, Arthur Kern, Robert Kotick, Edward Kozel, Maggie Wilderotter, and Gary Wilson (the "Individual Defendants") respectfully submit this response in opposition to Plaintiffs' request for an "immediate" trial on the validity of Yahoo! employee severance plans (the "Severance Plans"). Plaintiffs contend that these Severance Plans will derail Microsoft Corporation ("Microsoft") from proceeding with its unsolicited proposal to acquire Yahoo! (the "Microsoft Proposal").

PRELIMINARY STATEMENT

1. Plaintiffs have not shown that good cause exists for imposing on the Court, Yahoo! and its board of directors (the "Yahoo! Board") the well-recognized burdens and costs of expedited litigation at the present time. Plaintiffs' theory of the case – that Microsoft has been, or will be, deterred from its pursuit of Yahoo! as a result of the Severance Plans – is completely unsupported by the record. Microsoft has not been deterred in the least.

2. Even after Yahoo! implemented the Severance Plans, Microsoft has publicly affirmed on numerous occasions that its Proposal still stands. Microsoft has also recently signaled its intent to run a proxy contest for the election of directors at Yahoo!'s next annual meeting. (Ex. A). In addition, Microsoft made it known, even before Yahoo! adopted the Severance Plans, that it intended "to offer significant retention packages to [Yahoo!'s] engineers, key leaders and ***employees across all disciplines.***" (Ex. B) (emphasis added).

3. Further, as Plaintiffs note in their Letter, the value of the Severance Plans appears to be less than 2% of the total transaction value of the Microsoft Proposal (Margules Letter at 3) – an amount that can hardly be considered preclusive to Microsoft, or any other suitor.

4. In addition, Plaintiffs' suggestion that the Yahoo! Board is acting improperly by exploring alternatives to the Microsoft Proposal is based entirely on speculation derived from newspaper articles and internet blog entries (Compl. ¶¶ 58, 61, 67, 71, 75), and is also contrary to well-established Delaware law. *See, e.g., In re CompuCom Sys. Stockholders Litig.*, C.A. No. 499-N, 2005 Del. Ch. LEXIS 145 (Del. Ch. Sept. 29, 2005) (dismissing breach of fiduciary duty claims where plaintiffs' pleading acknowledged that the board was acting on an informed basis by exploring various strategic alternatives).

5. In fact, Delaware courts have refused to hear claims for injunctive relief before a board has had an opportunity to thoroughly evaluate potential strategic alternatives, and where "there is no corporate transaction . . . to attack." *See Dover Diversified v. Margaux*, C.A. No. 13829, 1994 WL 1751667, at *2 (Del. Ch. Nov. 4, 1994); *see also In re Cox Commc'ns, Inc. S'holder Litig.*, 879 A.2d 604, 609 (Del. Ch. 2005) (denying motion to expedite, "for the obvious

reason that there was as yet no transaction to enjoin," and the only thing on the table was a "proposal" that was subject to ongoing examination and negotiation by the board).

6. Under the circumstances, it is simply not in the best interests of Yahoo! and its stockholders (whom Plaintiffs purport to represent) for the Yahoo! Board to be preparing for an "immediate" trial on the discrete matter of the Severance Plans while in the midst of making vital decisions regarding the future of the Company. Even Plaintiffs concede that "this Court will typically allow a board a reasonable amount of leeway in implementing good faith strategic efforts" (Compl. ¶ 49) -- exactly what the Yahoo! Board is engaged in here. Once the Yahoo! Board has made a decision about which alternative, if any, to pursue, and the parties and the Court have a better understanding about what claims, if any, are appropriate for a preliminary injunction hearing or an expedited trial, the parties can address further scheduling issues at that time.

7. Accordingly, Yahoo! and the Individual Defendants respectfully suggest that the proper course for proceeding at this time is to deny Plaintiffs' request for an expedited trial and to continue moving forward with discovery consistent with the Case Management Order. This will allow the Yahoo! Board, which consists of a majority of independent and disinterested directors, to continue exploring alternatives to the Microsoft Proposal and make a decision about the various options under consideration.

BACKGROUND

8. On January 31, 2008, in a letter to Yahoo!'s Board, Microsoft made an unsolicited proposal to acquire all of the outstanding shares of Yahoo! common stock for $31 per share in cash or 0.9509 shares of Microsoft common stock. (Compl. ¶¶ 4, 50-51). According to Microsoft, its proposal has a total equity value of approximately $44.6 billion. (Compl ¶ 50).

The next day, the Yahoo! Board publicly announced that it would "evaluate the [Microsoft Proposal] carefully and promptly in the context of Yahoo!'s strategic plan and pursue the best course of action to maximize the long-term value for shareholders." (Compl. ¶ 56; Ex. C).

9. Nearly two weeks later, on February 11, 2008, Yahoo! issued a press release explaining that "the Yahoo! board of directors has carefully reviewed Microsoft's unsolicited proposal with Yahoo!'s management team and financial and legal advisors and has unanimously concluded that the proposal is not in the best interests of Yahoo! and our stockholders." (Ex. D). The Board determined after extensive deliberations that Microsoft's Proposal "substantially undervalues" Yahoo!, including its global brand, large worldwide audience, significant recent investments in advertising platforms and future growth prospects, free cash flow and earning potential, as well as its substantial unconsolidated investments. *Id.*[1]

10. Faced with the reality that the Microsoft Proposal was causing many of its employees to look elsewhere for work, the Yahoo! Board, upon the advice of the Compensation Committee, directed the Compensation Committee to implement the Severance Plans. (Ex. F). The Severance Plans were designed for the primary purpose of retaining Yahoo! employees during this period of uncertainty, maintaining a stable work environment, and providing certain economic benefits to eligible employees in the event their employment is terminated following a change of control. *Id.*

11. Importantly, the Severance Plans contain a "double trigger," which means that there are two conditions that must be satisfied in order for an employee to be eligible for benefits. *Id.* First, a change in control must occur. Second, an eligible employee must be

[1] Recently, Yahoo! publicly filed an investor presentation that details the Company's three-year financial plan and strategic initiatives that was presented to the Yahoo! Board ***before*** the Company received the Microsoft Proposal. (Ex. E). The presentation supports the unanimous determination by the Yahoo! Board that the Microsoft Proposal "substantially undervalues" Yahoo!. *Id.*

terminated by the Company without "cause"[2] or the employee must resign for "good reason"[3] within two years from the date of the change in control. *Id.* An employee is not eligible for benefits under the Severance Plans unless ***both*** events occur.

12. A few days after Yahoo! announced the terms of the Severance Plans, Plaintiffs filed for expedited proceedings, alleging that the Severance Plans would somehow deter Microsoft (or other suitors) from moving forward with a bid for Yahoo!. The parties thereafter agreed to the Case Management Order that has governed the discovery proceedings in this action to date.

13. Plaintiffs' speculation that the Severance Plans would have a chilling effect on Microsoft's original interest in acquiring Yahoo! was completely unfounded. Since the Severance Plans were announced, Microsoft has publicly affirmed that it is standing by its Proposal. (Exs. H, I). Microsoft also has signaled its intent to move forward with a proxy contest to replace a majority of the Yahoo! Board at Yahoo!'s annual meeting. (Ex. A).

14. Microsoft's professed willingness to proceed with its Proposal in the face of the Severance Plans is not surprising given that Microsoft has publicly announced from the outset that it considers Yahoo! employees the "key part of our success as a combined company" and that it would "dedicate significant rewards and compensation" to retain Yahoo! employees. (Ex. H). In fact, Microsoft made it clear when it launched the Microsoft Proposal that it intended

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[2] In general, Yahoo! has "cause" to terminate employment under the Severance Plans if an employee has been grossly negligent in the performance of his or her job duties, continuously fails to perform his or her job duties, violates company policies, breaches his or her agreements with the company or has been convicted of a felony. (Ex G).

[3] In general, an employee has "good reason" to resign under the Severance Plan if there is a substantial negative change in the employee's duties or responsibilities, work location or compensation following a change in control compared to the employee's employment terms prior to a change in control. (Ex G).

"to offer significant retention packages to [Yahoo!'s] engineers, key leaders and employees across all disciplines." (Ex. B).

THE MOTION TO EXPEDITE SHOULD BE DENIED

15. Plaintiffs are not entitled to expedited proceedings simply because they assert that Yahoo!'s Severance Plans are unlawful and ought to be enjoined or invalidated. Rather, Plaintiffs must show "good cause" why expedition is "necessary" to justify imposing on the Court, Yahoo!, and the Yahoo! Board the well-recognized burdens and costs of expedited litigation. *See Greenfield v. Caporella,* C.A. No. 8710, 1986 WL 13977, at *2 (Del. Ch. Dec. 3, 1986) ("This Court does not set matters for an expedited hearing or permit expedited discovery unless there is a showing of good cause why that is necessary.") (citation omitted); *Giammargo v. Snapple Beverage Corp.*, C.A. No. 13845, 1994 WL 672698, at *2 (Del. Ch. Nov. 15, 1994) (holding that expedited proceedings will not be allowed unless a plaintiff has "articulated a sufficiently colorable claim and shown a sufficient possibility of a threatened irreparable injury").

16. As explained below, Plaintiffs have failed to state a colorable claim or demonstrate that they are threatened with imminent, irreparable harm. *See, e.g., Giammargo,* 1994 WL 672698, at *2 (denying request for expedited proceedings, noting that "where there clearly is no demonstrable need for the remedy of preliminary injunction or, in the rarer case when there is not even any colorable claim pleaded, [the Court should] decline to impose the costs associated with [an expedited] proceeding"); *In re Tri-Star Pictures Inc. Litig.*, C.A. No. 9477, transcript at 3-4 (Del. Ch. Sept. 29, 1989) (finding that initiating expedited proceedings based on pleadings that are legally inadequate on their face would "inflict[] an injustice upon the parties and waste[] the resources of the Court"). Moreover, the balance of the equities here weighs in favor of denying Plaintiffs' request for an expedited trial.

PLAINTIFFS HAVE FAILED TO STATE A COLORABLE CLAIM

17. Plaintiffs' case is centered on their view that the Severance Plans will somehow deter Microsoft from its attempt to acquire Yahoo!. (Complaint ¶ 81; Margules Letter at 4). As explained below, Plaintiffs' claim is unsupported by any evidence, and fails as a matter of Delaware law.

18. The Severance Plans were implemented for a rational and reasonable business purpose – *i.e.*, to retain employees. (Ex. F). Because the decision was not a "defensive measure," it does not trigger *Unocal* review. *See, e.g., Glazer v. Zapata Corp.*, 658 A.2d 176, 183 (Del. Ch. 1993) (denying request for preliminary injunction; holding transaction with a third party was not a "defensive measure" under *Unocal*); *Doskocil Cos. v. Griggy*, C.A. No. 10095, 1988 Del. Ch. LEXIS 113, at *18-19 (Del. Ch. Aug. 18, 1988) (denying request for preliminary injunction; holding that a proposed issuance of preferred stock was not a "response" to a "threat" under *Unocal*). As such, the Yahoo! Board is entitled to the benefit of the business judgment rule. *See, e.g., Gantler v. Stephens*, C.A. No 2392-VCP, 2008 Del. Ch. LEXIS 20 (Del. Ch. Feb. 14, 2008) (dismissing claims; finding *Unocal* inapplicable and holding board's decision to reject proposal for company protected by business judgment rule).

19. Even assuming that the heightened scrutiny imposed under *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d. 949, 954-56 (Del. 1985) applies in this context, Plaintiffs' attack on the Severance Plans fares no better. *First*, a vote by independent and disinterested directors, coupled with advice rendered by an investment banker and legal counsel, constitutes a *prima facie* showing of good faith and reasonable investigation. *See Tomczak v. Morton Thiokol, Inc.*, C.A. No. 7861, 1990 Del. Ch. LEXIS 47, at *26 (Del. Ch. Apr. 5, 1990). Here, a majority of disinterested and independent directors, along with the aid of independent financial and legal

advisors, determined that the Microsoft Proposal was inadequate and constituted a threat to Yahoo!'s corporate policy and effectiveness. Plaintiffs have failed to provide any support sufficient to overcome this record evidence. *Id.* (finding first prong of *Unocal* satisfied on ground that a majority of directors were independent and sought the advice of legal and financial advisors); *see also Polk v. Good*, 507 A.2d 531, 537 (Del. 1986) (finding first prong of *Unocal* satisfied where plaintiff had not met its "heavy" burden of overcoming the presumption attaching to an independent board's decision).

20. *Second*, the Severance Plans have not "precluded" Microsoft from proceeding with its Proposal. (Exs. H, I). Steven Ballmer, Microsoft's Chief Executive Officer, made it clear – ***before*** Yahoo! adopted the Severance Plans – that Microsoft intended "to offer significant retention packages to [Yahoo!'s] engineers, key leaders and ***employees across all disciplines***." (Ex. B) (emphasis added). Since the Severance Plans were announced, Microsoft has publicly affirmed that it is standing by its Proposal. (Ex. H).

21. Moreover, even taking Plaintiffs' alleged estimation that the Severance Plans are worth between $462.4 million and $757.4 million (Margules Letter at 3), this constitutes only ***1.03% and 1.7%, respectively***, of Microsoft's $44.6 billion bid for Yahoo!. Therefore, it cannot reasonably be argued that the Severance Plans are a "lock-up" or that they will in any way impede Microsoft, or any other potential acquirer, from purchasing Yahoo!.

22. Indeed, the Severance Plans pale in comparison to the other provisions or transactions that Delaware courts have previously held were not preclusive. *See, e.g., In re Toys "R" Us, Inc. S'holder Litig.*, 877 A.2d 975, 1000 (Del. Ch. 2005) (finding termination fee of 3.75% to be reasonable); *McMillan v. Intercargo Corp.*, 768 A.2d 492, 505-06 (Del. Ch. 2000) (holding that 3.5% termination fee was within the range of reasonableness); *Goodwin v. Live*

Entm't, Inc., C.A. No. 15765, 1999 WL 64265, at *23 (Del. Ch. Jan. 25, 1999) (finding that a 3.125% termination fee is "commonplace" and "within the range of reasonableness"), *aff'd mem.*, 741 A.2d 16 (Del. 1999); *see also Paramount Commc'ns, Inc. v Time, Inc.*, 571 A.2d 1140, 1155 (Del. 1989) (merger transaction not preclusive where acquirer could have purchased the combined company); *City Capital Assocs. Ltd. P'ship v. Interco, Inc.*, 551 A.2d 787, 801 (Del. Ch. 1988) (refusing to enjoin sale of division of company on ground that sale was not a "show stopper"); *Unitrin, Inc., v. Am. Gen. Corp.*, 651 A.2d 1361,1383 (Del. 1995) (fully implemented repurchase program, super majority vote provisions, and poison pill not preclusive where proxy contest remained a viable alternative).

23. *Third*, this Court has refused to invalidate change of control severance provisions in similar contexts. For example, in *In re Pennaco Energy, Inc. Shareholders Litigation*, the Court observed that ***"it is advisable for [the Court] to be cautious about using the existence of such payments as the underpinning for an injunction. . . ."*** 787 A.2d 691, 709-10 (Del. Ch. 2001) (denying request for injunctive relief; holding that plaintiffs are not likely to succeed in proving that change in control severance payments were the product of a breach of fiduciary duty) (emphasis added); *see also In re Lukens Inc. S'holders Litig.*, 757 A.2d 720, 730 (Del. Ch. 1999) (dismissing claims challenging significant change of control employment agreements); *Shamrock Holdings, Inc. v. Polaroid Corp.*, 559 A.2d 278, 290 (Del. Ch. 1989) (denying request for preliminary injunction; holding that multiple defensive measures including ***formation of an ESOP***, issuance of convertible preferred stock to a friendly third-party investor, and a stock repurchase plan were within the range of reasonableness); *Kingsbridge Capital Group v. Dunkin Donuts, Inc.*, C.A. No. 10907, 1989 Del. Ch. LEXIS 87 (Del. Ch. Aug. 7, 1989) (refusing to enjoin defensive measures ***including newly created ESOP***, sale of a new

class of convertible preferred stock to institutional investor, and poison pill); *MAI Basic Four, Inc. v. Prime Computer, Inc.*, C.A. No. 10428, 1988 Del. Ch. LEXIS 161, at *2-3 (Del. Ch. Dec. 20, 1988) (refusing to enjoin defensive measures including shareholder rights plan, ***an employee retention plan***, an employee severance bonus plan, an employee pension plan, a stock appreciation rights plan, and stock options which accelerate with a change of control).

24. In fact, even *Buckhorn, Inc. v. Ropak Corp.*, the case Plaintiffs principally rely on to support their misguided theory that the Severance Plans should be invalidated under Delaware law, actually *upholds* the decision to adopt employee severance payments triggered upon a change in control. 656 F. Supp. 209, 232 (S.D. Ohio 1987). In *Buckhorn*, the board granted severance payments to its employees who were concerned about the threat to their job security posed by an unsolicited tender offer. *Id.* The Court held that the severance payments "reasonably advance the shareholders' interest in retaining key management personnel in their present positions during a critical transition period, without unduly entrenching management or over-burdening [the bidder]." *Id.* at 232-33.[4]

25. For these reasons, Plaintiffs have not alleged a colorable claim under Delaware law, and the Motion should therefore be denied.

PLAINTIFFS HAVE NOT SHOWN IRREPARABLE HARM

26. Even if Plaintiffs could demonstrate that the allegations in the Complaint state a colorable claim – which they cannot – expedition is unwarranted here because Plaintiffs have not demonstrated that they will suffer imminent, irreparable injury without an expedited trial. Plaintiffs admit that they are not entitled to an expedited trial unless they show "a

[4] Moreover, that Plaintiffs have found an expert who believes the Severance Plans are "atypical" does not support the conclusion that the Severance Plans are preclusive or unreasonable. Nor does it warrant the "immediate" trial on the Severance Plans that Plaintiffs are requesting.

sufficient possibility of a threatened irreparable injury." (Margules Letter at 4). Plaintiffs' claim that they ***might*** be irreparably harmed because "a potential acquiror, such as Microsoft, ***may*** decide that the added cost and uncertainty makes it untenable to continue the pursuit of an acquisition" (Margules Letter at 4), is entirely speculative, not supported by any evidence, and insufficient to show imminent, irreparable harm. *See, e.g., Nomad Acquisition Corp. v. Damon Corp.*, C.A. No. 10173, 1988 Del. Ch. LEXIS 133, at *19 (Del. Ch. Sept. 20, 1988) (finding alleged irreparable injury to plaintiff as purely speculative and holding that, for the Court to grant injunctive relief, irreparable harm to plaintiff must be "imminent," "unspeculative," and "genuine") (citation omitted).

27. In contrast, if the Court invalidates the Severance Plans, there will be real harm to Yahoo!, which faces a significant risk of losing its most valuable asset – its employees. *See, e.g., Kingsbridge Capital Group*, 1989 Del. Ch. LEXIS 87, at *21 (refusing to invalidate an ESOP on ground that "rescinding the ESOP would surely have negative effects on employee morale which would redound to the detriment of the company and its shareholders"); *see also MAI Basic Four, Inc.*, 1988 Del. Ch. LEXIS 161, at *12-13 (holding that harm from alleged takeover defenses being struck down was clearly greater than any harm to plaintiff).

28. Ultimately, Plaintiffs' claim boils down to a concern over the potential loss of an alleged premium for their shares. For example, Plaintiffs speculate that Microsoft may not offer as much money for their shares than it otherwise might if it ends up completing an acquisition because of the Severance Plans. (Complaint ¶ 81; Margules Letter at 4). Money damages would provide an adequate remedy for any such alleged harm. *See, e.g., Sonet v. Plum Creek Timber Co.*, C.A. No. 16639, 1998 WL 749445, at *1 (Del. Ch. Sept. 23, 1998) (denying request for expedited proceedings where harm alleged was "not irreparable, but susceptible to

adequate remedy through damages"); *Glammargo*, 1994 WL 672698, at *3 (denying expedited preliminary injunctive relief on ground that there is no plausible reason why a money award would not be sufficient).

29. Accordingly, there is no merit to Plaintiffs' argument that, without an expedited trial, Plaintiffs will suffer irreparable harm.

THE BALANCE OF EQUITIES WEIGHS AGAINST EXPEDITED DISCOVERY

30. Finally, the balance of equities favors denying Plaintiffs' request for expedited proceedings. It would be unduly burdensome and counterproductive for Yahoo! and the Yahoo! Board to have to explore strategic alternatives in the face of an imminent trial over the Severance Plans. *See, e.g.*, *Dover Diversified,* 1994 WL 1751667, at *2 (refusing to hear claims for injunctive relief before a board has had an opportunity to thoroughly evaluate potential strategic alternatives, and "there is no corporate transaction . . . to attack"). Indeed, having to prepare now for an expedited trial will undoubtedly interfere with the Yahoo! Board's ability to manage the affairs of the company at this crucial stage, and could serve to undermine the Yahoo! Board's ability to act in the best interest of Yahoo! and its stockholders.

31. Accordingly, the equities favor having the Court delay consideration of whether to schedule an expedited hearing or trial until after the Yahoo! Board has made a decision about how to proceed. At such time, the parties and the Court will have a better picture of the issues, if any, that need to be adjudicated.

32. In the meantime, Yahoo! will continue producing documents to Plaintiffs pursuant to the Case Management Order, so they will not be prejudiced in the event that litigation proceeds on an expedited basis after the Yahoo! Board makes a decision. In fact, Yahoo! has already produced substantially all of the paper documents, consisting of, among

other things, all non-privileged, responsive Board minutes and presentations since January 2007, the resolutions approving the Severance Plans, and the Severance Plans themselves. In addition, Yahoo! has already produced over 1500 pages of electronic documents and is continuing to review electronic documents pursuant to the Case Management Order, and intends to produce electronic documents on a rolling basis over the coming weeks.

CONCLUSION

For all of the above-stated reasons, Plaintiffs' request for an expedited trial should be denied.

Respectfully submitted,

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DATED: March 20, 2008

EXHIBIT A

REDACTED IN ITS ENTIRETY

CERTIFICATE OF SERVICE

I, Edward B. Micheletti, hereby certify that I caused to be served the Public Version of Yahoo! Inc.'s and Individual Defendants' Opposition To Plaintiffs' Motion For Expedited Proceedings that was filed on March 20, 2008 and Public Version of Exhibit A thereto on this 26th day of March, 2008 upon:

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March 17, 2008

PUBLIC VERSION

BY LEXIS-NEXIS FILE & SERVE

The Honorable William B. Chandler III
Court of Chancery
34 The Circle
P.O. Box 424
Georgetown, DE 19947

DATED:
MARCH 20, 2008

Re: *In re Yahoo! Inc. Shareholders Litigation*, Consol. C.A. No. 3561-CC

Dear Chancellor Chandler:

We, along with Bernstein Litowitz Berger & Grossmann LLP, are Court-appointed Lead Counsel in this action. We write in accordance with the Court's direction during a teleconference on March 14, 2008, that we outline the basis for our expedited trial request. On February 22, 2008, we filed a motion for expedited proceedings and supporting brief. On March 3, 2008, this Court entered a Case Management Order obligating defendants to produce documents and respond to plaintiffs' interrogatories on an expedited basis. Plaintiffs agreed at that time to defer our request to schedule an expedited trial until after we reviewed defendants' initial document production. Defendants reserved the right to oppose scheduling of a trial.

On March 7, 2008, Yahoo! Inc. ("Yahoo") made its initial document production – a mere 1211 pages, all but 52 of which consisted of publicly-available SEC filings. The 52 pages of non-public information included the terms of two change-in-control Parachute Plans covering all of Yahoo's approximately 14,000 full-time employees (the "Parachute Plans"), and a single board presentation respecting the Plans. The Parachute Plans were approved contemporaneously with Yahoo's Board's rejection of the proposal by Microsoft Corporation ("Microsoft") to acquire Yahoo for $31 per share in cash and stock, which at the time was a 62% premium over Yahoo's stock price. The Universal Parachute Plans were also adopted just two weeks after Yahoo announced that it intended to fire approximately 1,000 of its 14,000 employees as part of a "Strategic Workforce Realignment." (*See* Yahoo Form 8-K, dated February 15, 2008) (attached as Exhibit A).

Defendants' limited document production confirms our suspicions regarding the

unreasonableness and improper purpose of the Universal Parachute Plans. In anticipation of trial, we have retained a leading executive compensation consultant, James F. Reda of James F. Reda & Associates, LLC, who has provided an Affirmation, attached as Exhibit B, explaining his preliminary conclusion that the Universal Parachute Plans are "atypical and unreasonable." In summary, the Universal Parachute Plans give every employee the right to obtain severance following a change-in-control if the employee terminates his or her own employment for "good reason." This "constructive termination" clause is defined broadly to include, among other things, a "substantial adverse alteration" in the employee's duties or responsibilities. Reda observes that in his experience, this type of "good reason" provision, if present at all, is reserved solely for the Chief Executive Officer and his or her direct reports, not all employees. (Reda Aff. ¶ 12) He concludes that the Universal Parachute Plans impose huge known costs on a potential acquiror by forcing it to bear not only the expense associated with employees terminated as part of an integration plan, but also the expense associated with employees who voluntarily terminate their employment, claiming "good reason" to do so – an effective transfer of value from stockholders to employees. Perhaps of greater concern, the plans create a cloud of uncertainty over any interested strategic bidder by interfering with an acquiror's opportunity to control the integration of Yahoo's workforce and the harnessing of synergies between the entities. (*Id.* ¶ 19) These costs and uncertainties for an acquiror make an acquisition of Yahoo significantly more risky.

Plaintiffs seek a prompt trial and the invalidation of the Universal Parachute Plans. This relief is necessary and appropriate on an expedited basis so that Microsoft and other potential acquirors are not deterred by the Universal Parachute Plans from acquiring Yahoo, and so the price offered to Yahoo stockholders is not artificially reduced by whatever amount an acquiror reserves on account of the uncertainties and unknown future costs imposed by the Universal Parachute Plans.

Yahoo held its last annual meeting on June 12, 2007, making it important that the validity of the Universal Parachute Plans be adjudicated promptly, before shareholders are asked to vote on Yahoo's directors in a potential contested election, and before Microsoft decides what merger price, if any, to propose in connection with its potential proxy fight. The adverse consequences to shareholders of a deterred bid or an artificially low bid are difficult, if not impossible, to quantify.

Preliminary Expert Analysis of the Universal Parachute Plans

As is more fully explained in the attached Reda Affirmation, the Universal Parachute Plans are atypical and unreasonable. Reda's preliminary conclusions are as follows:

a. On its face, the Severance Plans are atypical and unreasonable in that they cover every Yahoo employee, without regard to the value of that employee to the business. In Reda's twenty years of work in the field of

executive compensation consulting, he cannot recall ever having seen a severance plan cover all of a major corporation's employees.

b. The Severance Plans are not aligned with their stated purpose, as set forth in internal Yahoo documents.[2] REDACTED In addition, the Severance Plans are inconsistent with Yahoo's announcement, just weeks before the adoption of the Severance Plans, that Yahoo would reduce its headcount by as much as 1,000 employees.

c. The Severance Plans can be expected to impose a substantial economic cost on an acquiror of Yahoo.[3] REDACTED

d. The Severance Plans create substantial uncertainty and possible disruption for a potential acquiror, in addition to the direct costs of the benefits, because of a constructive termination or "Good Reason" provision covering all employees. Vagueness in the defined terms under which employees are entitled to benefits makes it difficult to predict what kinds of changes in circumstances will be claimed to trigger the benefits – an uncertainty increased by the number of employees granted such rights. As a result, an acquiror will not be able to predict with any degree of certainty which or how many employees will choose to leave, and how much the aggregate benefits will cost.

e. Given the inconsistency between the stated purposes of the Severance Plans and their actual provisions, there are serious questions about whether the stated purpose of the Severance Plans is a pretext. The circumstances suggest that the impact of the Plans on a potential acquiror is the purpose for which they were adopted, and not an unintended consequence.

(Reda Aff. ¶ 3)

The Legal Basis for an Expedited Trial

As the Delaware Supreme Court has observed, "Delaware courts are always receptive to expediting any type of litigation in the interests of affording justice to the parties," and the Court of Chancery is "renowned" for its "expedited decision making." *Box v. Box*, 697 A.2d 395, 398-99 (Del. 1997). The Court "traditionally has acted with a certain solicitude for plaintiffs" and "has thus followed the practice of erring on the side of more [expedited] hearings than fewer," *Giammargo v. Snapple Beverage Corp.*, 1994 Del. Ch. LEXIS 199, at *6 (Nov. 15, 1994) (Ex. C). The recognized hurdle for expedited proceedings is low – they will be ordered where "in the circumstances plaintiff has

articulated a sufficiently colorable claim and shown a sufficient possibility of a threatened irreparable injury." *Id.*

The *Unocal* standard imposes on a corporation's board the burden of showing "(1) that it had reasonable grounds for believing that a danger to corporate policy and effectiveness existed; and (2) that its defensive response was reasonable in relation to the threat posed." *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946, 954-56 (Del. 1985) Enhanced scrutiny is applied as to "any defensive measures taken in response to some threat to corporate policy and effectiveness which touch upon issues of control." *Gilbert v. El Paso Co.*, 575 A.2d 1131, 1144 (Del. 1990).

There can be little question that the enactment of the Universal Parachute Plans presents fact issues requiring adjudication under at least the enhanced scrutiny of *Unocal*. The Universal Parachute Plans were created contemporaneously with Yahoo's rejection of Microsoft's acquisition proposal. The highly unusual feature of affording every single full-time Yahoo employee a right to severance benefits upon a change of control and a "good reason" constructive termination – at a time when the company had announced significant layoffs – is sufficient in itself to question the reasonableness of the Universal Parachute Plans. *See Gaillard v. Natomas Co.*, 208 Cal. App. 3d 1250 (Cal. Ct. App. 1989) (reversing summary judgment for defendants since, among other things, "the 'good reason' condition to leaving Natomas during the six-month period appears to be so broad as to provide the executives with a ready justification to terminate their employment and collect the benefits immediately after the effective date of the merger, before the expiration of the six-month period").

"Injury is irreparable when a later money damage award would involve speculation" or undue "difficulty of shaping monetary relief." *Hollinger Int'l, Inc. v. Black*, 844 A.2d 1022, 1090 (Del. Ch. 2004); *see also Cantor Fitzgerald, L.P. v. Cantor*, 724 A.2d 571, 586 (Del. Ch. 1998) (injunctive relief appropriate, even where a harm may be remedied by money damages, "when [the] damages are difficult to quantify"). If not invalidated on an expedited time frame, the Universal Parachute Plans threaten irreparable injury to Yahoo's stockholders. They impose an immense cost and exceptional risk on a potential acquiror that is difficult to quantify, not least because of the uncertainty about how many employees would be empowered to trigger the right to terminate their employment for "good reason" following a change in control.

The undue costs of the Universal Parachute Plans are ultimately borne by Yahoo stockholders in two ways, neither of which is readily quantifiable. First, a potential acquiror, such as Microsoft, may decide that the added cost and uncertainty makes it untenable to continue the pursuit of an acquisition. Second, a potential acquiror may hold back from Yahoo stockholders more value than the acquiror otherwise would, because of the need to fund the unknown costs of future severance benefits, and because anticipated synergies are less certain and obtainable (or delayed pending resolution or expiration of employee-asserted severance rights). Absent an expedited adjudication, Yahoo

stockholders cannot vote for a potential acquiror's nominees in a proxy contest with the knowledge of what the acquiror is willing to pay for Yahoo in circumstances unaffected by the distorting effect of the Universal Parachute Plans.[1]

The most appropriate remedy in these circumstances is the invalidation of the Universal Parachute Plans. There can be no question of this Court's authority to do so. In *Omnicare, Inc. v. NCS Healthcare, Inc.*, 818 A.2d 914 (Del. 2003), the Delaware Supreme Court reaffirmed the rule that contractual provisions entered in breach of a board's fiduciary duties are "invalid and unenforceable":

> In the context of this preclusive and coercive lockup case, the protection of Genesis' contractual expectations must yield to the supervening responsibility of the directors to discharge their fiduciary duties on a continuing basis. ***The merger agreement and voting agreements***, as they were combined to operate in concert in this case, ***are inconsistent with the NCS directors' fiduciary duties. To that extent, we hold that they are invalid and unenforceable.***

Id. at 939 (emphasis added). The *Omnicare* Court cited for that proposition its prior decision in *Paramount Comm's, Inc. v. QVC Network Inc.*, 637 A.2d 34, 51 (Del. 1993), in which the Court expressly rejected the argument that a third party, Viacom, obtained vested rights from contracts that unreasonably favored it to the detriment of Paramount's stockholders, who were being foreclosed from the opportunity to accept potential bids for the company:

> Viacom's protestations about vested rights are without merit. This Court has found that those defensive measures were improperly designed to deter potential bidders, and that such measures do not meet the reasonableness test to which they must be subjected. They are consequently invalid and unenforceable under the facts of this case.

Id. at 50-51.

Similarly, employees of Yahoo have no vested rights in Universal Parachute Plans created in breach of the Yahoo directors' fiduciary duties. The proper remedy for a breach of fiduciary duty is the invalidation of the Universal Parachute Plans. In *Buckhorn, Inc. v. Ropak Corp.*, 656 F. Supp. 209 (S.D. Oh. 1987), *aff'd*, 815 F.2d 76, 1987 U.S. App. LEXIS 2506 (6th Cir. 1987), the Court recognized the irreparable injury associated with the defensive measure of authorizing the accelerated vesting of existing

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[1] "The threat of an uninformed stockholder vote constitutes irreparable harm. . . . Even where there is no 'unscrambling the eggs' problem, courts have recognized the need to enjoin a shareholders meeting rather than allow a tainted vote to occur." *ODS Techs., L.P. v. Marshall*, 832 A.2d 1254, 1262, 1263 n.39 (Del. Ch. 2003).

stock options and new stock options upon a change of control. Accelerated vesting "does little to add to the job security of [the covered] employees," and "it causes demonstrable harm to the shareholders since it significantly dilutes shareholder equity." *Id.* at 233. The District Court enjoined and declared invalid the amendments to the stock option plans, and the Sixth Circuit ruled that "the interests of the shareholders and the public interest will be advanced by maintaining the injunctions." 1987 U.S. App. LEXIS 2506, at *3 (Ex. D). *See also Black & Decker Corp. v. Am. Standard Inc.*, 682 F. Supp. 772, 786 (D. Del. 1988) (enjoining compensation plans that provided for accelerated payments upon change of control).

The case of *NCR Corp. v. AT&T Co.*, 761 F. Supp. 475 (S.D. Oh. 1991), is also instructive. After expedited discovery and trial, the Court declared that the ESOP created by NCR in the face of a tender offer was "invalid and unenforceable" and enjoined the voting of the preferred shares purchased by the ESOP. *Id.* at 502-03. The Court found that the ESOP had a "number of unusual features" and that the board was "not acting in an informed capacity" when it "suddenly resurrected" the ESOP concept in the face of AT&T's tender offer. *Id.* at 494-97. A permanent injunction was issued invalidating the ESOP contracts even though the Court found that "the ESOP was motivated, at least in part, by a legitimate corporate purpose," and even though 5,500,000 preferred shares had been issued to the ESOP and approximately 24,000 employees were entitled to enroll in it. *Id.* at 481, 496, 497.

Further, as the Universal Parachute Plans are currently injuring and threatening additional injury to Yahoo's shareholders, invalidating the plans following an expedited trial is more likely to provide full and complete relief than leaving the shareholders to pursue a money damage claim. Yahoo may argue that, even if the deal with Microsoft is lost, money damages are an adequate remedy. This is ***not*** the case. Microsoft's offer valued Yahoo at $41.5 billion. Prior to the offer, Yahoo stock was trading at $19 per share, valuing the company at $25.4 billion. Should Microsoft leave the scene, Yahoo's stock may well swiftly drop back to $19 per share, or lower. The value destroyed for shareholders will exceed $15 billion. This is not a sum that Yahoo's directors are even remotely capable of paying.

In sum, an immediate trial on the validity of the Universal Parachute Plans is the only course that can provide an adequate remedy to shareholders. We respectfully request that the Court schedule five days for trial some time in late May or early June.

Respectfully,

/s/ David J. Margules
David J. Margules
(Bar No. 2254)

cc: Register in Chancery (by e-filing)
Edward P. Welch, Esquire (by e-filing)
David C. McBride, Esquire (by e-filing)

EXHIBIT F

IN THE CHANCERY COURT OF THE STATE OF DELAWARE

IN RE YAHOO! INC. SHAREHOLDERS LITIGATION	:	Consolidated C.A. 3561-CC

- - -

Chancery Court
34 The Circle
Georgetown, Delaware
Monday, March 24, 2008
11:00 a.m.

- - -

BEFORE: WILLIAM B. CHANDLER, III, Chancellor.

- - -

TELECONFERENCE

CHANCERY COURT REPORTERS
34 The Circle
Georgetown, Delaware 19947
(302) 856-5645

APPEARANCES:

(via telephone)

DAVID J. MARGULES, ESQ.
JOEL FRIEDLANDER, ESQ.
EVAN O. WILLIFORD, ESQ.
Bouchard, Margules & Friedlander, P.A.
-and-
MARK LEBOVITCH, ESQ.
BRETT M. MIDDLETON, ESQ.
Bernstein, Litowitz, Berger & Grossmann, LLP
of the New York Bar
for Plaintiffs Police and Fire Retirement System of the City of Detroit and the General Retirement System of the City of Detroit

EDWARD P. WELCH, ESQ.
EDWARD B. MICHELETTI, ESQ.
Skadden, Arps, Slate, Meagher & Flom, LLP
for Defendant Yahoo! Inc.

BRUCE I. SILVERSTEIN, ESQ.
Young, Conaway, Stargatt & Taylor, LLP
-and-
JOHN W. SPIEGEL, ESQ.
Munger, Tolles & Olson, LLP
of the California Bar
for Defendants Jerry Yang, Roy Bostock, Ron Burkle, Eric Hippeau, Vyomesh Joshi, Arthur Kern, Robert Kotick, Edward Kozel, Maggie Wilderotter, and Gary Wilson

- - -

And after the severance was adopted, they said exactly that on February the 22nd. If that's the case, there is no impact whatsoever from this plan on Microsoft.

Now, plaintiff also says that the amount of this is just huge, it's just depressing. They say it's 460 million and may go as high as 750 million; and they look to some of our numbers for that. Well, it's interesting, Your Honor, we produced documents over the weekend, in particular -- and it was referenced in Mr. Margules' presentation -- it was in the form of Yahoo! minutes. And those minutes, on page 13, reference a communication between the general counsels of Yahoo! and Microsoft.

The minutes point out that Microsoft itself has said and represented that it has earmarked $1.5 billion for employee retention at Yahoo!. Now, using the numbers that Mr. Reda uses, 460 to 750 million, Microsoft is not higher than Yahoo!; Microsoft is way higher than Yahoo!, perhaps even by a factor of two. And that appears at page 13 of the February 8th Yahoo! minutes. And oh, by the way, the Yahoo! Board was well aware of this, and considered

this fact and then put it in the minutes when it adopted the severance plan.

Now, Your Honor, why would Microsoft do something like this? Well, it makes perfect sense. Why would they have their own plan? And why would they not be complaining about our plan? Again, it makes perfect sense.

Severance packages or retention packages -- however you choose to characterize them -- really work in a situation like this, particularly in an uncertain environment like the takeover context. This is Silicon Valley. There's huge competition for all employees at all levels.

At all levels? Again, Your Honor, it was Microsoft that said, "We want it across all disciplines." It makes sense for everyone involved to have a plan like this. It makes sense for Yahoo!. It makes sense for Microsoft. That's why Microsoft is not complaining; and that's why Mr. Reda is wrong.

Now, again, Mr. Reda may well be upset, and the bloggers may be upset. But apparently, by its own conduct, and by its own statements which we have attached in many cases to our submission, Your Honor, Microsoft isn't upset.

EXHIBIT G

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UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 10-K/A
(Amendment No. 1)

☑ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the fiscal year ended December 31, 2007

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the transition period from to

Commission File Number 0-28018

YAHOO! INC.

(Exact name of Registrant as specified in its charter)

Delaware	**77-0398689**
(State or other jurisdiction of incorporation or organization)	*(I.R.S. Employer Identification No.)*

701 First Avenue
Sunnyvale, California 94089
(Address of principal executive offices, including zip code)

Registrant's telephone number, including area code:
(408) 349-3300

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	Name of Each Exchange on Which Registered
Common stock, $.001 par value	The NASDAQ Stock Market LLC (NASDAQ Global Select Market)
Rights to Purchase Series A Junior Participating Preferred Stock	The NASDAQ Stock Market LLC (NASDAQ Global Select Market)

Securities registered pursuant to Section 12(g) of the Act:
None
(Title of Class)

Indicate by check mark if the Registrant is a well-known seasoned issuer as defined in Rule 405 of the Securities Act. Yes ☑ No ☐

Indicate by check mark if the Registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☑

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☑ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of "large accelerated filer," "accelerated filer," and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☑ Accelerated filer ☐

Non-accelerated filer ☐ (Do not check if a smaller reporting company) Smaller reporting company ☐

Indicate by check mark whether the Registrant is a shell company (as defined by Rule 12b-2 of the Exchange Act). Yes ☐ No ☑

As of June 29, 2007, the aggregate market value of voting stock held by non-affiliates of the Registrant, based upon the closing sales price for the Registrant's common stock, as reported on the NASDAQ Global Select Market, was $32,724,039,883. Shares of common stock held by each officer and director and by each person who owns 10 percent or more of the outstanding common stock have been excluded in that such persons may be deemed to be affiliates. This determination of affiliate status is not necessarily a conclusive determination for any other purpose.

The number of shares of the Registrant's common stock outstanding as of February 15, 2008 was 1,337,165,049.

DOCUMENTS INCORPORATED BY REFERENCE

The following documents (or parts thereof) are incorporated by reference into the following parts of this Form 10-K:

None.

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As noted above, in November 2007, the Compensation Committee approved a new compensation arrangement for Ms. Decker in connection with her appointment as President. The arrangement included retention grants of stock options that are scheduled to vest in installments over a three-year period and restricted stock units that are scheduled to vest in installments over a two-year period. In addition, the Compensation Committee provided that the portion of the options granted in November 2007 that are vested as of the date Ms. Decker terminates employment with the Company will generally remain exercisable for one year following her termination date, and approved an amendment to the option granted to her on May 31, 2006 to provide that the portion of the option that is vested as of the date Ms. Decker terminates employment with the Company will generally remain exercisable for three years following her termination date. These post-termination exercise provisions are to help mitigate Ms. Decker's risks related to short-term stock price fluctuations in a volatile market and to allow her to benefit from strategic initiatives implemented while she was President, the full value of which may not have been realized by the Company prior to her departure.

The material terms of the options and restricted stock unit awards granted to the Named Executive Officers in 2007 are described below under "Grants of Plan-Based Awards — Fiscal 2007."

The Compensation Committee determined that a mix of both stock options and restricted stock units with time-based vesting schedules was appropriate in 2007, principally because stock options would only have value if the Company's stock price increased, while the restricted stock units would have a retention benefit regardless of stock price, and thus were important to help retain the recipient, but the overall value of the award would still be based on stock price. The particular size of the grants and mix of stock options and restricted stock units was determined by the Compensation Committee in its discretion after an overall assessment of all of the factors noted above, Mr. Yang's recommendations and, in the case of the awards to Ms. Decker, with the view toward bringing her total direct compensation opportunity (after considering her base salary and annual bonus opportunity) within the top quartile of competitive market practice for purposes of both recognition and retention, and because the structure of her compensation package is at risk for her own personal as well as the Company's performance.

Grant Practices. Beginning in August 2006, the Compensation Committee adopted procedures providing that new hire and retention equity awards may be made to employees, including executive officers, by the Compensation Committee only at regularly scheduled meetings on or around the 25th of each month except March, June, September and December. This schedule is designed so that awards are not granted during the period commencing on the first day of the last month of each quarter and ending two business days after the Company's quarterly earnings release.

The Company does not have any program, plan or practice to time the grant of equity-based awards to our executives in coordination with the release of material non-public information. All equity grants are made under the Company's stock plan, which is approved by the stockholders. The per share exercise price of stock options cannot be less than the closing sale price of the Company's common stock on the Nasdaq Stock Market on the grant date.

Compensation Committee Actions after Fiscal 2007

Change in Control Severance Plan. On February 12, 2008, the Compensation Committee approved two change in control severance plans (the "Severance Plans") that, together, cover all full-time employees of the Company, including each of the Named Executive Officers currently employed by the Company. On January 31, 2008, the Company received an unsolicited proposal from Microsoft Corporation ("Microsoft") to acquire the Company. On February 11, 2008, the Company issued a press release indicating that its Board of Directors had unanimously concluded that the proposal was not in the best interest of the Company and our stockholders. The Severance Plans are designed, in light of the uncertainty caused by the Microsoft proposal, to help retain the Company's employees, maintain a stable work environment and provide certain economic benefits to the employees in the event their employment is actually or constructively terminated in connection with a change in control of the Company. The material terms of the Severance Plans are described in a Form 8-K filed by the Company with the Securities and Exchange Commission on February 19, 2008. Compensia advised the Company and F.W. Cook & Co. advised the Compensation Committee with respect to the terms of the plans.

EXHIBIT H

IN RE WORLDCOM, INC. SECURITIES LITIGATION; This Document Relates to: ALL ACTIONS

MASTER FILE 02 Civ. 3288 (DLC)

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

2003 U.S. Dist. LEXIS 8979

May 28, 2003, Decided

SUBSEQUENT HISTORY: Later proceeding at In re WorldCom, Inc. Sec. Litig., 2003 U.S. Dist. LEXIS 8845 (S.D.N.Y., May 29, 2003)
Petition denied by In re Cal. Pub., 2003 U.S. App. LEXIS 22570 (2d Cir., Oct. 31, 2003)

PRIOR HISTORY: In re WorldCom, Inc. Sec. Litig., 2003 U.S. Dist. LEXIS 8972 (S.D.N.Y., May 28, 2003)

DISPOSITION: Court consolidated cases for pretrial purposes and established guidelines for parties to follow.

COUNSEL: [*1] For HGK Asset Management Lead, PLAINTIFF: Christopher Lometti, Ashley H Kim, Schoengold & Sporn, PC, New York, NY USA.

For The Albert Fadem Trust, Bruce A Fadem, as Trustee, PLAINTIFFS: Victor E Stewart, Christopher Lovell, Christopher J Gray, Lovell & Stewart, LLP, New York, NY USA.

For H Carl McCall Lead, PLAINTIFF: John P Coffey, Max W Berger, J Erik Sandstedt, Bernstein, Litowitz, Berger & Grossman, LLP, New York, NY USA.

For Bernard J Ebbers, DEFENDANT: David Franklin Wertheimer, Epstein, Becker & Green PC, New York, NY USA.

For Bernard J Ebbers, DEFENDANT: R David Kaufman, Brunini Grantham Grower & Hewes, PLLC, R David Kaufman, M Patrick McDowell, Brunini, Grantham, Grower & Hewes, Jackson, MI USA.

For Arthur Anderson, LLP, DEFENDANT: Jonathan J Walsh, Curtis, Mallet-Prevost, Colt & Mosle LLP, New York, NY USA.

For Salomon Smith Barney, Inc, Citigroup Inc, Jack Grubman, CONSOLIDATED DEFENDANTS: Martin London, Paul, Weiss, Rifkind, Wharton & Garrison, New York, NY USA.

JUDGES: DENISE COTE, United States District Judge.

OPINION BY: DENISE COTE

OPINION

CONSOLIDATION ORDER

DENISE COTE, District Judge:

On August 15, 2002, the Court entered an Order consolidating [*2] securities class actions filed against WorldCom, Inc. ("WorldCom") and those associated with it ("August 15 Order"). The August 15 Order applied and continues to apply to any securities class action filed in or transferred to this Court and assigned to the undersigned which relates to the same subject matter as the actions consolidated by the August 15 Order. The securities class actions were consolidated under the caption *In re WorldCom, Inc. Securities Litigation* and are referred to as the *"Securities Litigation"*. The August 15 Order appointed the New York State Common Retirement Fund as lead plaintiff for the *Securities Litigation.* Bernstein Litowitz Berger & Grossmann LLP and Barrack Rodos & Bacine were selected as co-Lead Counsel for the *Securities Litigation* ("Lead Counsel").

Lawsuits against WorldCom and/or individuals and entities on account of their connections to WorldCom that allege individual, rather than class, claims have also been assigned to this Court and are referred to as the "Individual Actions." By Order dated December 23, 2003 ("December 23 Order"), this Court found that the Individual Actions and the securities class actions involved common questions [*3] of law and fact, and that consolidation of these actions for pretrial proceedings was necessary. The Order provided that the defendants would have no obligation to move, answer, or otherwise respond to the complaints in any of the Individual Ac-

tions until a separate scheduling order addressing those obligations was issued. The December 23 Order also provided, *inter alia,* that after a decision was issued on the motion to remand made by New York City Employees' Retirement System ("NYCERS"), in which forty-one Individual Actions represented by Milberg Weiss Bershad Hynes & Lerach LLP were given permission to intervene, Lead Counsel and counsel for plaintiffs in any Individual Action would be invited to present a proposed order for consolidation of the class actions and the Individual Actions for pretrial purposes.

Having received various submissions from counsel regarding the proposed consolidation, and for the reasons set forth in the Opinion of May 22, 2003, it is hereby

ORDERED as follows:

I. CONSOLIDATION AND STAY

1. The Individual Actions are consolidated for pretrial purposes with the *Securities Litigation* pursuant to Rule 42(a), Fed. R. Civ. P.

2. No action taken [*4] hereunder shall have the effect of making any person, firm or corporation a party to any action in which the person or entity has not been named, served, or added as such in accordance with the Federal Rules of Civil Procedure.

3. Any Individual Action presently assigned to this Court may file an amended complaint by July 11, 2003. Any Individual Action transferred hereafter to this Court shall have the later of July 11, 2003, or twenty-one days following arrival on this Court's docket to file an amended complaint. No further amendments of any complaint in an Individual Action will be permitted without permission of the Court.

4. The requirement that any defendant named and served in an Individual Action must move, answer or otherwise respond in that action is stayed. If circumstances necessitate action by any Individual Action plaintiff or defendant to protect interests unique to such Individual Action plaintiff or defendant, such plaintiff or defendant may seek relief from the stay by appropriate motion. All defenses of any defendant named and served in an Individual Action, including but not limited to defenses based on lack of personal jurisdiction or lack of subject matter jurisdiction, [*5] are hereby preserved.

II. MASTER DOCKET AND SEPARATE ACTION DOCKETS

5. A Master Docket, No. 02 Civ. 3288, was established by the August 15 Order for the consolidated proceedings in the *Securities Litigation* and any other actions subsequently consolidated with them either for all purposes or for pretrial purposes. The actions being consolidated by this Order, including but not limited to the previously consolidated *Securities Litigation* and the Individual Actions, are hereafter referred to as the "Consolidated Actions." Entries in said Master Docket shall be applicable to the Consolidated Actions, and entries shall be made therein in accordance with the regular procedures of the Clerk of this Court, except as modified by this Order.

6. When a pleading or paper is filed and the caption, pursuant to this Order, shows that it is applicable to "All Actions," the Clerk shall file such pleading in the Master File and note such filing in the Master Docket. No further copies need be filed nor other docket entries made.

7. When a pleading or paper is filed and the caption shows that it is applicable to less than All Actions, the Clerk shall file the original of the paper in the Master [*6] File and a copy in the file of each separate action to which it applies and shall note such filing in the Master Docket and in the docket of each such separate action. The party filing such paper shall supply the Clerk with sufficient copies of any paper to permit compliance with this paragraph.

III. NEWLY FILED OR TRANSFERRED ACTIONS

8. When an action that relates to the same subject matter as the Consolidated Actions is hereafter filed in or transferred to this Court and assigned to the undersigned, it shall be consolidated with these actions in the same manner as the cases identified in Section I above (provided that any case transferred to this Court solely for pretrial proceedings shall be consolidated only to that extent, absent further order of this Court), except as provided below, and the Clerk of Court shall

> (a) File a copy of this Order in the separate file for such action; and
>
> (b) Make an appropriate entry in the Master Docket.

9. Any defendant who has notice of the filing in or transfer to this Court of a related case shall

> (a) Mail a copy of this Order to the attorneys for the plaintiff(s) in the newly filed or transferred case; and
>
> (b) [*7] File a notice of service of this Order with the Clerk of Court to be docketed and filed in the Master File.

10. The Court requests the assistance of counsel in calling to the attention of the Clerk the filing or transfer of any case which might be consolidated with these actions.

IV. APPLICATION OF THIS ORDER TO PENDING AND SUBSEQUENT CASES

11. This Order shall apply to each of the actions consolidated by the August 15 Order and to each of the Individual Actions. This Order shall apply to each such case that is subsequently filed in or transferred to this Court and assigned to the undersigned, unless a party objecting to the consolidation of that case or to any other provision of this Order serves an application for relief from this Order or from any of its provisions within ten (10) days after the date on which defense counsel mails a copy of this Order to counsel for that party. The provisions of this Order shall apply to such action pending the Court's ruling on the application

V. CAPTIONS

12. Every pleading filed in the Consolidated Actions, and in any separate action included therein, shall bear the following caption:

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT [*8] OF NEW YORK

IN RE WORLDCOM, INC. SECURITIES LITIGATION

This Document Relates to:

ALL ACTIONS

MASTER FILE

02 Civ. 3288 (DLC)

VI. DUTIES OF COUNSEL

13. Lead Counsel shall have the following responsibilities:

a. Sign any consolidated class action complaint, motions, briefs, discovery requests, objections, or notices on behalf of all plaintiffs or those plaintiffs filing the particular papers.

b. Conduct all pretrial proceedings on behalf of plaintiffs.

c. Brief and argue motions.

d. Initiate and conduct discovery.

e. Speak on behalf of plaintiffs at any pretrial conference.

f. Employ and consult with experts.

g. Conduct settlement negotiations with defense counsel on behalf of class action plaintiffs.

h. Call meetings of plaintiffs' counsel.

i. Distribute to all plaintiffs' counsel copies of all notices, orders, and decisions of the Court; maintain an up-to-date list of counsel available to all plaintiffs' counsel on request; keep a complete file of all papers and discovery materials filed or generated in the Consolidated Actions which shall be available to all plaintiffs' counsel at reasonable hours

(1) provided [*9] that plaintiffs and their counsel in the Consolidated Actions become signatories to all confidentiality agreements in place for such discovery and bear all duplication expenses.

(2) The obligation of Lead Counsel to disseminate copies of orders, pleadings and other filings to counsel for plaintiffs in the Consolidated Actions shall be satisfied by prompt posting of such documents on the web-site maintained by Lead Counsel, <www. worldcomlitigation.com>.

j. Keep Liaison Counsel informed about discovery matters and other issues and proceedings of common interest in the *Securities Litigation* and the Individual Actions.

k. Consult with Liaison Counsel to obtain the views of plaintiffs' counsel in the Individual Actions on proposed document requests, interrogatories, requests for admissions, depositions, and litigation strategy, and incorporate those views wherever it is appropriate to do so.

l. Should any counsel in the Individual Actions identify in connection with a deposition being taken by Lead Counsel

any discovery that is unique to one or more of the Individual Actions, Lead Counsel shall devise a process through consultation with Liaison Counsel to permit [*10] an attorney from the Individual Actions to participate in the taking of each such deposition.

VII. APPOINTMENT OF LIAISON COUNSEL

14. Lowey Dannenberg Bemporad & Selinger, P.C., co-counsel. for NYCERS, is designated as Liaison Counsel for the Individual Actions.

15. Liaison Counsel shall have the following responsibilities:

a. Distribute to all counsel in the Individual Actions those materials that they need to review to form and to communicate their views regarding discovery, motion practice and settlement.

b. Confer with all counsel in the Individual Actions to obtain their views regarding discovery and any issues that need to be communicated to Lead Counsel or to the Court.

c. Communicate with Lead Counsel regarding any discovery that plaintiffs in the Individual Actions wish to take and regarding litigation strategy and motion practice.

d. Communicate with the Court regarding any issue common to the Individual Actions.

e. Coordinate the taking of any discovery that the Court has authorized that is unique to the Individual Actions.

VIII. SERVICE

16. Service by defendants of pleadings and all other papers on Lead Counsel and Liaison Counsel [*11] shall be deemed sufficient service in the *Securities Litigation* and Individual Actions Any pleadings or other papers so served shall also be served on Lead Counsel in the action entitled *In re WorldCom, Inc. ERISA Litigation.*

IX. RESTRICTIONS

17. No attorney for any plaintiff in an Individual Action may contact defense counsel regarding discovery without the consent of Lead Counsel or, in the absence of such permission, leave of the Court. No attorney for any plaintiff in an Individual Action other than Liaison Counsel may contact Lead Counsel regarding discovery without being advised by Liaison Counsel that Lead Counsel has consented to the contact, or in the absence of such consent, leave of the Court.

18. Counsel may seek relief from these restrictions and from any of the provisions of this Order by application to the Court upon a showing of good cause. A showing of good cause regarding discovery issues includes a showing that the discovery issue is unique to an Individual Action.

X. FUTURE ORDERS

19. All parties are required to check the Court's website on a daily basis in order to obtain notice of any further orders issued by the Court with respect to the *Securities* [*12] *Litigation* and the Individual Actions. The Court's website is available at <www.nysd.uscourts.gov> through the "CourtWeb" icon. Orders may be found by entering the name "WorldCom" in the "caption search" option. Orders will be listed under the master docket number, No. 02 Civ. 3288.

XI. DISCOVERY

20. All discovery obtained by any plaintiff in any Consolidated Action may be shared with any other plaintiff. All discovery obtained by any defendant in any Consolidated Action may be shared with any other defendant. All discovery obtained by any party in any Consolidated Action shall be deemed discovered in each of the Consolidated Actions.

21. No witness may be deposed more than once without leave of the Court.

XII. PRIVILEGE

22. Cooperation by and among counsel is essential for the orderly and expeditious resolution of this litigation. Accordingly, the communication of information among and between Lead Counsel in the *Securities Litigation,* Liaison Counsel and counsel in the Individual Actions and among and between defendants' counsel shall not be deemed a waiver of the attorney-client privilege or the attorney work product doctrine.

XIII. RIGHT TO BE HEARD BY THE COURT

23. [*13] All counsel in the Consolidated Actions shall use their best efforts to avoid duplication, inefficiency and inconvenience to the Court, other parties,

other counsel and witnesses. Nothing stated herein, however, shall be construed to diminish the right of any party to be heard by the Court on matters that are not susceptible to joint or common action, or as to which there is a genuine disagreement among counsel.

SO ORDERED:

Dated: New York, New York

May 28, 2003

DENISE COTE

United States District Judge