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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

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GREGORY ANDERSON, an individual,

CASE NO.

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Plaintiff,

COMPLAINT FOR DAMAGES,
DECLARATORY JUDGMENT, AND
INJUNCTIVE RELIEF

15

vs.

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YAHOO!, INC., a Delaware corporation,

DEMAND FOR JURY TRIAL

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Defendant,

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Plaintiff Gregory Anderson alleges:

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JURISDICTION

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1. This Court has subject matter jurisdiction of this action based on the complete
22 diversity of citizenship between Plaintiff and all Defendants pursuant to 28 USC Section
23 1332. No Defendant is a citizen of the same state as Plaintiff and the amount in controversy
24 exceeds the value of Seventy-five Thousand Dollars (\$75,000.00).

25

2. This Court also has subject matter jurisdiction of this action based on federal
26 question grounds pursuant to 28 USC Section 1331. The complaint alleges violations of
27 Title VII of the Civil Rights Act of 1964 (42 USC Sections 2000e-2(a) et seq.) and the
28 Worker Adjustment and Retraining Notification provisions of 29 USC Section 2101 et seq.

1 together with their adopted regulations (20 CFR Part 639). This Court has supplemental
2 jurisdiction over the California state law claims which are all so related to the claims giving
3 rise to the Court's original jurisdiction that they form part of the same case and controversy
4 pursuant to 28 USC Section 1367(a).

5 INTRADISTRICT ASSIGNMENT

6 3. This action arises in Santa Clara County, California, and venue assignment is
7 proper in the San Jose Division of this Court. Plaintiff was employed in Defendant Yahoo's
8 principal executive office located in Santa Clara County and the events alleged below were
9 performed at or through Defendant Yahoo's offices in Santa Clara County.

10 THE PARTIES

11 4. Plaintiff Gregory Anderson ("Plaintiff") is an adult individual and a citizen of the
12 State of Michigan. Plaintiff is male and was, at the time of the events alleged below, a
13 resident of Santa Clara County, State of California.

14 5. Defendant Yahoo!, Inc. ("Yahoo") is a corporation formed in the State of
15 Delaware with its principal office in Santa Clara County, State of California, and is a citizen
16 of the States of California and Delaware. At the time of the events alleged below Yahoo was
17 qualified to do business in California and conducting business in California with more than
18 ten thousand employees in offices and facilities throughout the state and globally, including
19 its chief executive office in Santa Clara County, California.

20 PLAINTIFF'S EMPLOYMENT BY YAHOO AND ITS TERMINATION

21 6. Yahoo employed Plaintiff by means of a written offer letter ("the Offer Letter")
22 dated November 3, 2010. Portions of the Offer Letter may be subject to a confidentiality
23 agreement and accordingly it is not attached to this Complaint. The Offer Letter used
24 phrases such as "You'll be investing your time with us. And we are ready to invest in you."
25 The Offer Letter promised Plaintiff that "In return for you bringing your expertise ... we plan
26 on making it worth your time." The Offer Letter stated that Yahoo was "committed to doing
27 business ethically." Moreover, the Offer Letter contained optimistic and disarming language
28 and assurances such as, "We're really excited to have you on our team and can't wait to

1 receive your acceptance..." and, "We can't wait to start working with you and hope that
2 you'll find working at Yahoo! one of the most rewarding experiences of your life ...".
3 Although the Offer Letter stated the employment was "at will", it did so dismissively, as if a
4 mere perfunctory obligation, and introduced the subject with the phrase "We interrupt this
5 fantastic offer with a word from our lawyers:" The cumulative effect of this language led
6 Plaintiff to believe that Yahoo would not terminate Plaintiff's employment without some just
7 reason honestly held.

8 7. Plaintiff accepted the Offer Letter on November 5, 2010, and signed an
9 *Employee Confidentiality and Assignment of Inventions Agreement on November 5, 2010.*
10 Plaintiff commenced employment with Yahoo on November 8, 2010, as the Managing
11 Editor, Autos. Plaintiff initially worked in the "Listings" division, later renamed "Commerce,"
12 and in 2013 his position was moved into the Media Organization or Media Group (the
13 "Media Org"). At the time he commenced working Plaintiff signed additional documents
14 including an employment agreement, Privacy Policy Acknowledgment, and Code of Ethics
15 Acknowledgment. Portions of these documents may be subject to a confidentiality
16 agreement and accordingly they are not attached to this Complaint.

17 8. On June 11, 2012, Yahoo promoted Plaintiff to the position of Editorial Director
18 of Yahoo's Autos, Homes, Shopping, Small Business, and Travel verticals. The writing
19 memorializing the promotion repeated Yahoo's prior promise that "You'll be investing your
20 time with us. And we're ready to invest in you." Soon after Marissa Mayer ("Mayer") became
21 President and CEO of Yahoo in July 2012, she instructed her staff to offer retention
22 packages to those employees they considered to be Yahoo's key employees, and Plaintiff
23 was among those employees given restricted stock units to affirm that Yahoo valued their
24 services and to maintain their loyalty and commitment to Yahoo. This further led Plaintiff to
25 believe that he would be treated fairly and that Yahoo would not terminate Plaintiff's
26 employment without some just reason honestly held.

27 9. Defendant Yahoo's written "Personal Leave" policy governing U.S. employees
28 during Plaintiff's employment stated that Yahoo could terminate an employee while on

1 approved leave “for legitimate business reasons.” Plaintiff believed that he would not be
2 terminated while on approved leave except for a legitimate business reason.

3 10. Plaintiff faithfully performed all tasks and duties assigned to or required of him
4 in a timely and competent manner with demonstrable positive results. Prior to Mayer, Kathy
5 Savitt (“Savitt”), and Megan Liberman (“Liberman”) taking over management of the Media
6 Org at Yahoo, Plaintiff received a promotion, raise, and compliments, along with other
7 indications that his performance was fully satisfactory. Kathy Savitt (“Savitt”) is a female and
8 at the time of the events alleged below was the Chief Marketing Officer, reporting directly to
9 Mayer. Megan Liberman (“Liberman”) is a female and at the time of the events alleged
10 below was Defendant Yahoo’s Vice-President – News, reporting to Savitt.

11 11. In May 2014, Plaintiff was chosen to attend the prestigious Knight-Wallace
12 Journalism Fellowship (“the Fellowship”) at the University of Michigan as a representative of
13 Yahoo. After a lengthy approval process that required the signatures of Savitt and Yahoo’s
14 Chief Development Officer Jacqueline Reses, Plaintiff obtained Yahoo’s consent to attend
15 the Fellowship. As a condition of that approval Plaintiff agreed in writing to return to
16 employment at Yahoo once the Fellowship was completed. On May 30, 2014, at the time
17 Yahoo approved his leave of absence to attend the Fellowship, Savitt emailed Plaintiff and
18 stated “Congratulations on such a huge honor and I know you’ll make us proud :)!” During
19 the Fellowship Plaintiff was working on a documentary for Yahoo Autos about the toxic
20 effects of leaded gasoline on children.

21 12. On November 10, 2014, while Plaintiff was still attending the Fellowship in
22 Michigan, Defendant Yahoo terminated Plaintiff’s employment. Liberman told Plaintiff that
23 his termination resulted from the numbers generated by Yahoo’s Quarterly Performance
24 Review procedure. Plaintiff requested documentation of these numbers and copies of his
25 peer reviews to rule out some mistake, but was denied any information concerning the
26 metrics upon which his termination was supposedly based. At that time Liberman informed
27 Plaintiff that he was among the lowest five percent (5%) of Yahoo’s employees, all of whom
28 were being similarly terminated at substantially the same time as Plaintiff. Plaintiff is

1 informed and alleges that in November 2014, Yahoo terminated approximately six hundred
2 (600) employees based on the results of Yahoo's Quarterly Performance Review procedure.

3 YAHOO'S ADOPTION AND ABUSE OF THE QPR PROCESS

4 13. On July 17, 2012, Mayer became President and CEO of Defendant Yahoo. In
5 about August 2012, Mayer caused Yahoo to adopt and implement a new management
6 device called Quarterly Performance Reviews ("QPRs") as part of a procedure (the "QPR
7 Process") used to manage and reduce Defendant Yahoo's workforce.

8 14. Yahoo's QPR Process closely resembles a form of employment management
9 technique called variously "forced distribution," "forced ranking," or "stack ranking," (here
10 "Stack Ranking"), formerly used at companies such as GE and Microsoft. The Stack
11 Ranking procedures used by other large employers, in contrast to Yahoo's QPR Process,
12 were usually annual rather than quarterly, provided more employee feedback and
13 transparency, and were less draconian in their application.

14 15. Yahoo's QPR Process as expressed in the Media Org involved several steps.
15 The manager who directly supervised an employee assigned that employee a rating number
16 from 0.0 to 5.0 (the "Employee Score") based on how that employee performed compared
17 with his or her immediate peers. This number resulted in the employee being placed into
18 one of five ranks. These ranks, called "Buckets", were labeled "Greatly Exceeds,"
19 "Exceeds," "Achieves," "Occasionally Misses," and "Misses". Each quarter a specified
20 percentage of each department's employee population would be assigned to each Bucket.
21 Managers were required to rank their employees so that a sufficient percentage of
22 employees were assigned to each Bucket, even if all the employees were performing well or
23 at the same level. Managers were each given a targeted mean Employee Score for all of
24 their reports. The managers then entered their Employee Scores into the company
25 computer system.

26 16. Yahoo's QPR Process in the Media Org involved a second step called
27 "Calibration." During Calibration the Employee Scores input by managers were modified up
28 or down by higher-level management, who often had no actual contact with the employees

1 whose scores they were modifying. Management personnel adjusting the numbers during
2 Calibration were not required to report why they made the modifications and there was no
3 oversight or accounting whatsoever for upper management's manipulation of an employee's
4 original ranking. The employees were never told their actual numeric ranking or how it had
5 been determined, but were only informed of their Bucket ranking or that they were being
6 terminated because of that ranking. The QPR Process therefore permitted and encouraged
7 discrimination based on gender and any other personal bias held by management.

8 17. An employee's quarterly Score and Bucket could result in immediate
9 termination, such as recently when Yahoo changed the effect of the QPR Process so that a
10 single "Occasionally Misses" ranking justified termination regardless of a manager's intent.
11 Those not immediately terminated that quarter could have their Employee Scores averaged
12 over three or four quarters for a second-tier determination whether or not they should be
13 terminated. At one point, for example, two "Occasionally Misses" within a one-year period
14 would result in termination. For some quarters the scores were averaged over a period of
15 several quarters and the "bottom 5 percent" were terminated. In later quarters, the metric
16 used to identify "bottom" performers was altered solely to reach a headcount reduction goal
17 that management consultants had set with Mayer. In the first quarter of 2015, for example,
18 the Media Org considered whether to terminate employees with a rolling four-quarter
19 average QPR Score of 2.2 or 2.3, both within the "Achieves" Bucket. Media Org leadership
20 settled on 2.3 because it would impact more employees. The QPR Process was opaque
21 and the employees did not know who was making the final decisions, what numbers were
22 being assigned by whom along the way, or why those numbers were being changed. This
23 manipulation of the QPR Process permitted employment decisions, including terminations,
24 to be made on the basis of personal biases and stereotyping.

25 18. The rules implementing the QPR Process were vaguely drawn and
26 communicated on a need-to-know basis. The percentages assigned to each of the five
27 Buckets might change from quarter to quarter company-wide, and different departments (or
28 "orgs") would be assigned different percentages. For example, the Media Org might be

1 required to label 15 percent of its employees as "Misses" or "Occasionally Misses" while
2 other departments would only be required to identify 5 percent of their employees as
3 "Misses" or "Occasionally Misses." This was done specifically to achieve headcount-
4 reduction targets specific to each department, to "hit your number," as Yahoo managers
5 were instructed.

6 19. At the time that Defendant Yahoo and Mayer adopted the QPR Process, the
7 practice of Stack Ranking was being increasingly criticized in the press and rejected by
8 larger employers. For example, in August 2012, Vanity Fair published a widely read and
9 reported article by Kurt Eichenwald on "Microsoft's Lost Decade" that persuasively
10 impeached Microsoft's use of Stack Ranking. By November 2013, Microsoft had abandoned
11 Stack Ranking. Moreover, at the time that Defendant Yahoo and Mayer were adopting their
12 QPR Process, Stack Ranking had been successfully challenged in class-action lawsuits
13 against companies such as Ford Motor Co., 3M, Goodyear, and Capital One. Litigation is
14 currently pending against Microsoft on account of the discriminatory effect of its Stack
15 Ranking system. Thus, Defendant Yahoo and Mayer knew that the version of Stack Ranking
16 being implemented in Yahoo's QPR Process was subject to abuse, often resulted in claims
17 of discrimination, and needed to be closely monitored in application and effect.

18 20. Defendant Yahoo's management has publicly denied any connection between
19 its QPR Process and the Stack Ranking devices used by other companies. When Yahoo's
20 QPR Process was compared with Stack Ranking practices during employee meetings,
21 Mayer publicly denied that the QPR process resembled Stack Ranking. Mayer has been
22 quoted as stating on December 21, 2012, "I want to be clear. It's not stack rank. It's sort of a
23 bucket sort. So you end up in either exceeds, meets, strongly exceeds, things like that. But
24 it's not a stack rank. As a result, I don't think it has some of the same characteristics as an
25 actual stack rank." Plaintiff believes and alleges that this statement was knowingly untrue
26 when made and was made to mislead Yahoo's employees and to cover up the disparate
27 and discriminatory impact of the QPR Process.

28 21. On November 7, 2013, Mayer again publicly denied that the QPR Process was

1 in any way similar to Stack Ranking. Mayer publicly stated that managers exercised
2 significant discretion in their implementation of the QPR Process. But in fact first-tier
3 managers had no meaningful discretion and were bound by the instructions from, and the
4 actions of, their supervisors and management above.

5 22. Managers who objected to the draconian application of the QPR Process or its
6 discriminatory and biased use in specific situations were negated and retaliated against by
7 their supervisors.

8 23. At the time Yahoo terminated Plaintiff's employment on November 10, 2014,
9 Plaintiff was attending the Fellowship in Michigan on approved leave. Liberman told Plaintiff
10 that his termination was based on application of Yahoo's QPR Process. Plaintiff is informed
11 and alleges that it was Yahoo's policy and practice that employees on approved leave were
12 not subject to the QPR Process for the quarters they were absent on leave. Yet Yahoo
13 applied the QPR Process to Plaintiff while he was on approved leave and exempt from the
14 operation of the QPR Process, without consideration of the "huge honor" his attendance at
15 the Fellowship conferred on both him and Yahoo. In such a way Yahoo and its management
16 manipulated the QPR Process in a way that directly impacted Plaintiff, and was intended to
17 have, and did have, a disparate discriminatory impact on male employees.

18 24. When Liberman terminated Plaintiff on November 10, 2014, Plaintiff actually
19 reported to Scott Ard ("Ard"). Without consulting with Ard, Liberman decided to apply a new
20 and ad hoc "cumulative" QPR Process to Plaintiff, who had received four consecutive
21 quarters of "Achieves" ratings. Liberman personally called Plaintiff by phone, without Ard's
22 involvement, and told Plaintiff that she had fired him, to take immediate effect in the middle
23 of the Fellowship. Liberman did not inform Ard of Plaintiff's termination until the day
24 Liberman personally dismissed Plaintiff. There was no oversight of Liberman's manipulation
25 of the QPR Process, no apparent requirement that she report to anyone, and no
26 transparency for employees to understand what was happening and why.

27 25. Defendant Yahoo grew quickly by acquiring small start-ups and their
28 technology, along with their employees, in what were referred to as "acqui-hires". Plaintiff is

1 informed and alleges that despite Yahoo’s hiring of numerous acqui-hire employees,
2 between January 2012, and July 2015, Defendant Yahoo reduced its workforce by 31%, to
3 less than 11,000 employees, without declaring a reduction in force under the California or
4 federal WARN Acts. Plaintiff is informed and alleges that since August 2012, the QPR
5 Process has resulted on several occasions in Defendant Yahoo terminating more than 50
6 employees within a 30-day period.

7 26. Plaintiff is informed and alleges that Defendant Yahoo uses the QPR System
8 as a means to terminate large numbers of employees without the required compliance with
9 California’s Worker Adjustment and Retraining Notification Act (California Labor Code
10 Sections 1400 et seq.) and the federal Worker Adjustment And Retraining Notification
11 provisions of 29 USC Section 2101 et seq., together with its adopted regulations (20 CFR
12 Part 639) (collectively “the WARN Acts”). Because of Yahoo management’s manipulation of
13 the QPR Process without safeguards or accountability, employment terminations made
14 pursuant to the QPR Process are without legal or just cause, lack good faith, falsely rest on
15 non-existent or pretextual causes, and are made in violation of the legal rights and
16 contractual expectations of Yahoo’s employees. Defendant Yahoo should have notified
17 large numbers of its employees of their rights under the California and federal WARN Acts
18 prior to their termination, and Yahoo should have compensated those employees for a
19 period of up to sixty (60) days with wages and benefits in an amount not currently known.

20 **PLAINTIFF’S COMPLIANCE WITH ADMINISTRATIVE PREREQUISITES**

21 27. Plaintiff has filed a timely administrative complaint with the California
22 Department of Fair Employment and Housing (“DFEH”) as DFEH Number 478363-145660,
23 “dual-filed” with the Equal Employment Opportunity Commission (“EEOC”) as EEOC
24 Number: 37A-2015-01665-C, alleging gender-based discrimination and naming Defendant
25 as the party committing the discrimination. Plaintiff has received a Right to Sue Notice and
26 brings this action in a timely manner.

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28 /

FIRST CAUSE OF ACTION
Gender-Based Discrimination in Violation of the FEHA
By Defendant Yahoo

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3 28. The allegations of paragraphs 1 through 27 are incorporated by reference into
4 this cause of action.

5 29. On November 10, 2014, Defendant Yahoo terminated Plaintiff's employment.

6 30. Plaintiff is informed and alleges that he was terminated from his employment
7 at Yahoo because of his gender in violation of the California Fair Employment and Housing
8 Act ("FEHA"), California Government Code Section 12940(a).

9 31. Plaintiff is informed and alleges that he was terminated from his employment
10 as a result of the actual and intentional gender-based discrimination of Defendant Yahoo
11 through the actions of its supervisory employees.

12 32. Plaintiff bases his belief of intentional discrimination in part on statements that
13 he heard Susan Kittenplan ("Kittenplan"), a subordinate of Savitt, make on about August 8,
14 2014. Defendant Yahoo was looking to fill the position of Editor in Chief for the Autos
15 Magazine, and Kittenplan stated that Yahoo was looking for a female to fill the position,
16 whereupon Kittenplan stated "I know that sounds bad." It apparently took many months to
17 find a female for the position and on about April 20, 2015, Defendant Yahoo appointed
18 Sharon Silke Carty, a female, to the position. The female hired was less qualified than male
19 candidates for the position.

20 33. Plaintiff further bases his belief of intentional discrimination in part on
21 statements attributed to Cecile Lal ("Lal"), a former Senior Director of Product Management
22 for Defendant Yahoo. Defendant Yahoo filed suit against Lal in the Superior Court for Santa
23 Clara County (Yahoo! Inc. v. C. Lal, Case No. 1-15-CV-280271) alleging that Lal breached
24 her duty of confidentiality in making certain statements. On July 1, 2015, the parties
25 stipulated to a permanent injunction and payment of damages attributable to Lal's breach of
26 employment agreement. Among the breaching statements was Lal's account of a
27 Calibration meeting that included Mayer and Savitt. In discussing the performance review to
28 be given a male employee named Vivek Sharma ("Sharma"), Savitt is alleged to have stated

1 "He just annoys me. I don't want to be around him." Sharma and Savitt worked in different
2 areas of Yahoo and had little interaction. Mayer agreed that Savitt's biased feelings about
3 Sharma were sufficient justification to downgrade his review. As a result Sharma soon left
4 Yahoo. Plaintiff alleges that Mayer encouraged and fostered the use of the QPR Program to
5 accommodate management's subjective biases and personal opinions, to the detriment of
6 Yahoo's male employees.

7 34. Plaintiff further bases his belief of intentional discrimination in part on Savitt's
8 apparent manipulation of the QPR Process. When Savitt began at Yahoo the top managers
9 reporting to her in the Media Org, including the chief editors of the 12 magazines (many of
10 which were formerly called "verticals"), were less than 20% female. Three years later those
11 top managers were more than 80% female. At the time that this percentage of female
12 managers reporting to Savitt increased so dramatically, the number of female reporters and
13 presenters in the industry generally declined by 10 percentage points.

14 35. Plaintiff is informed and alleges that Savitt has publicly expressed support for
15 increasing the number of women in media and has intentionally hired and promoted women
16 because of their gender, while terminating, demoting or laying off male employees because
17 of their gender. Plaintiff is informed and alleges that of the approximately 16 senior-level
18 editorial employees hired or promoted by Savitt in the Media Org in approximately an 18-
19 month period, 14 of them, or 87%, were female.

20 36. Plaintiff is informed and alleges that in the Media Org females with the same
21 Employee Score as male employees were treated better than their male counterparts. For
22 example, in 2014-2015 a female employee in the Media Org received the same 1.8
23 "Occasionally Misses" Employee Score as a male, after which the male was immediately
24 terminated and the same female assumed the terminated male employee's position.
25 Moreover, this female employee was allowed to appeal her rating whereas the terminated
26 male was denied an opportunity to appeal. Thus, a female employee who received an
27 "Occasionally Misses" rating was allowed to appeal and was then promoted, while the
28 incumbent male in that same position, who received the identical QPR Score, was

1 immediately dismissed with no appeal permitted.

2 37. Plaintiff is informed and alleges that in the Media Org female employees in
3 management positions were allowed to leave voluntarily rather than being fired, more
4 frequently than male employees in similar positions, who were more often fired without an
5 opportunity to find new employment and resign. Termination has a detrimental effect on
6 subsequent employment opportunities that is not present when an employee resigns, or is
7 given time to find a new position. This resulted in males in the Media Org being fired in
8 numbers and percentages much greater than female employees, and thereby experiencing
9 a disparate detrimental effect on their future employment prospects.

10 38. In the alternative, if the QPR Process was not being intentionally manipulated
11 to achieve discriminatory results, then Plaintiff alleges he was terminated from his
12 employment as a result of the disparate discriminatory impact and effect of the QPR
13 Process as applied and implemented in the Media Org. In any event, Defendant Yahoo
14 knew or should have known that the QPR Process was having an unjustified and
15 discriminatory impact on the basis of gender in at least the Media Org.

16 39. In doing and permitting the above acts Defendant Yahoo engaged in
17 discrimination against Plaintiff on the basis of his gender in violation of the Fair Employment
18 and Housing Act, Government Code Section 12940(a).

19 40. As a proximate result of the gender-based discrimination by Defendant Yahoo
20 through the actions of Mayer, Liberman, and Savitt, Plaintiff has been denied employment
21 for which he was suited and qualified, in a position that was available, and without
22 justification. Plaintiff has suffered financial and economic losses because of the loss of
23 employment in an amount not currently known. Plaintiff's damages include but are not
24 limited to lost wages in the form of back pay and front pay, as well as lost benefits, bonuses,
25 and stock rights.

26 41. As a further proximate result of the discrimination by Defendant Yahoo through
27 the actions of Mayer, Liberman, and Savitt, and the manner and timing of the termination
28 just months into the Fellowship, Plaintiff has suffered embarrassment, shock, outrage, and

1 other severe emotional distress. The timing and manner of the termination have contributed
2 to Plaintiff's difficulty in finding replacement employment.

3 42. As a further proximate result of the discrimination by Defendant Yahoo through
4 the actions of Mayer, Liberman, and Savitt, and the manner and timing of the termination,
5 Plaintiff was required to complete the Fellowship and could not immediately begin searching
6 for new employment. When the Fellowship ended Plaintiff and his family were left in
7 Michigan with limited employment prospects and local connections. The wrongful
8 termination, without cause or advance notice, under the guise of QPR metrics, while Plaintiff
9 was on approved leave in Michigan, diminished both the enjoyment and the value of
10 Plaintiff's Fellowship, and left Plaintiff and his family stranded in Michigan, thereby
11 increasing Plaintiff's distress and disappointment.

12 43. As a further proximate result of the discrimination by Defendant Yahoo through
13 the actions of Mayer, Liberman, and Savitt, Plaintiff has been required to retain legal
14 assistance and has incurred costs and expenses to defend and exercise his statutory rights.
15 Plaintiff requests an award of attorney's fees.

16 44. The actions of Defendant Yahoo through the actions of Mayer, Liberman, and
17 Savitt as alleged, constitute "malice," "oppression," and "fraud" as defined at California Civil
18 Code Section 3294(c) and Plaintiff is entitled to punitive or exemplary damages against said
19 Defendant to make an example of and to punish Defendant in an amount to be determined.

20 **SECOND CAUSE OF ACTION**
21 **Gender-Based Discrimination in Violation of Title VII**
22 **Against Defendant Yahoo**

23 45. The allegations of paragraphs 1 through 44 are incorporated by reference into
24 this cause of action.

25 46. On November 10, 2014, Defendant Yahoo terminated Plaintiff's employment.

26 47. Plaintiff is informed and alleges that he was terminated from his employment
27 at Yahoo because of his gender in violation of Title VII of the Civil Rights Act of 1964, 42
28 U.S.C. Sections 2000e-2(a) et seq.

48. Plaintiff is informed and alleges that he was terminated from his employment

1 as a result of the actual and intentional gender-based discrimination by Defendant Yahoo
2 through the actions of Mayer, Liberman, and Savitt.

3 49. Plaintiff is further informed and alleges that he was terminated from his
4 employment as a result of the discriminatory disparate impact of the QPR Process that
5 Defendant Yahoo permitted to be manipulated by the actions of Mayer, Liberman, Savitt,
6 and other managers, with knowledge that the QPR Process was having a discriminatory
7 disparate impact on the basis of gender.

8 50. In doing and permitting the above acts Defendant Yahoo through the actions
9 of Mayer, Liberman, and Savitt, engaged in discrimination against Plaintiff on the basis of
10 his gender in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sections 2000e-
11 2(a) et seq.

12 51. As a proximate result of the gender-based discrimination by Defendant Yahoo
13 through the actions of Mayer, Liberman, and Savitt, Plaintiff has been denied employment
14 for which he was suited and qualified, in a position that was available, on the basis of his
15 gender. Plaintiff has suffered financial and economic losses because of the loss of
16 employment in an amount not currently known. Plaintiff's damages include but are not
17 limited to lost wages in the form of back pay and front pay, as well as lost benefits, bonuses,
18 and stock rights.

19 52. As a further proximate result of the discrimination by Defendant Yahoo through
20 the actions of Mayer, Liberman, and Savitt, and the manner and timing of the termination
21 just months into the Fellowship, Plaintiff has suffered embarrassment, shock, outrage, and
22 other emotional distress. The timing and manner of the termination have contributed to
23 Plaintiff's difficulty in finding replacement employment.

24 53. As a further proximate result of the discrimination by Defendant Yahoo through
25 the actions of Mayer, Liberman, and Savitt, and the manner and timing of the termination,
26 Plaintiff was required to complete the Fellowship and could not immediately begin searching
27 for new employment. When the Fellowship ended Plaintiff and his family were left in
28 Michigan with no employment prospects or local connections. The wrongful termination,

1 without cause or advance notice, under the guise of QPR metrics, while Plaintiff was on
2 approved leave in Michigan, diminished both the enjoyment and the value of Plaintiff's
3 Fellowship, and left Plaintiff and his family stranded in Michigan, thereby increasing
4 Plaintiff's distress and disappointment.

5 54. As a further proximate result of the discrimination by Defendant Yahoo through
6 the actions of Mayer, Liberman, and Savitt, Plaintiff has been required to retain legal
7 assistance, and has incurred costs and expenses to defend and exercise his statutory
8 rights. Plaintiff requests an award of attorney's fees.

9 55. The actions of Defendant Yahoo through the actions of Mayer, Liberman, and
10 Savitt, constitute intentional discriminatory treatment wherein Defendant Yahoo through the
11 actions of Mayer, Liberman, and Savitt, acted maliciously and with reckless indifference to
12 Plaintiff's rights. Plaintiff is entitled to punitive damages against Defendant Yahoo in an
13 amount to be determined.

14 **THIRD CAUSE OF ACTION**
15 **Termination in Violation of Public Policy**
16 **By Defendant Yahoo**

17 56. The allegations of paragraphs 1 through 55 are incorporated by reference into
18 this cause of action.

19 57. In doing and permitting the above acts of intentional discrimination and
20 termination of Plaintiff's employment by manipulation of the QPR Process, Defendant Yahoo
21 has terminated Plaintiff in violation of the public policy of the State of California.

22 58. Plaintiff is informed and alleges that the motivation for his termination included
23 Plaintiff's complaint to Yahoo management about the illegal manipulation of the QPR
24 Process. On about August 22, 2014, Plaintiff complained to Defendant Yahoo and Liberman
25 that the QPR Process concerning one of his direct reports was being unfairly manipulated to
26 the employee's disadvantage. Plaintiff had given this employee an Employee Score of 1.9,
27 or "Occasionally Misses." When the Score came back from "Calibration" it had been
28 reduced to a 1.0, as close to a "Misses" as possible while remaining "Occasionally Misses."
This 48% reduction in QPR score was made without any input or feedback from Plaintiff,

1 who was the employee's direct manager. Reducing an employee's score so drastically
2 would make it very difficult for the employee to recover as managers were effectively limited
3 to quarter-to-quarter increases of not more than half a point for their direct reports. At that
4 time Yahoo's company policy required termination for two "Occasionally Misses" scores in a
5 single calendar year.

6 59. Plaintiff is informed and alleges that possible motivation for his termination
7 may have included Plaintiff's complaint to Yahoo management about attempted bribery and
8 extortion concerning the QPR Process. In November 2013, Plaintiff informed Yahoo of an
9 incident involving attempted bribery to manipulate the QPR Process. Plaintiff complained to
10 the Ethics and Compliance Office that an employee named Billy Mills ("Mills") had offered
11 Plaintiff a bribe to give another employee a lowered Employee Score in Calibration, which
12 would likely protect Mills from receiving a "Misses" or "Occasionally Misses" QPR Score
13 because Mills and the other employee reported and "calibrated" to the same "L3" group
14 manager, Lisa Stromer. Plaintiff then discovered that Mills had a personal relationship with
15 Stromer, who was at that time Plaintiff's manager, and who was absent on a personal leave
16 of absence for 10 of the 13 weeks of that quarter. No action was taken against the offending
17 employee and Plaintiff received a retaliatory and unjustly low Employee Score of 1.6 from
18 Stromer, a QPR rating that later might have factored into his termination. This incident
19 showed that the QPR Process was manipulated in many different ways to both the
20 discriminatory and the arbitrary detriment of Yahoo employees.

21 60. As a proximate result of the wrongful termination discrimination by Defendant
22 Yahoo through the actions of Mayer, Liberman, and Savitt, Plaintiff has been denied
23 employment for which he was suited and qualified, in a position that was available, and
24 without justification. Plaintiff has suffered financial and economic losses because of the loss
25 of employment in an amount not currently known. Plaintiff's damages include but are not
26 limited to lost wages in the form of back pay and front pay, as well as lost benefits, bonuses,
27 and stock rights.

28 61. As a further proximate result of the wrongful termination by Defendant Yahoo

1 through the actions of Mayer, Liberman, and Savitt, and the manner and timing of the
2 termination just months into the Fellowship, Plaintiff has suffered embarrassment, shock,
3 outrage, and other severe emotional distress. The timing and manner of the termination
4 have contributed to Plaintiff's difficulty in finding replacement employment.

5 62. As a further proximate result of the wrongful termination by Defendant Yahoo
6 through the actions of Mayer, Liberman, and Savitt, and the manner and timing of the
7 termination, Plaintiff was required to complete the Fellowship and could not immediately
8 begin searching for new employment. When the Fellowship ended Plaintiff and his family
9 were left in Michigan with no immediate employment prospects or local business
10 connections. The wrongful termination, without cause or advance notice, under the guise of
11 QPR metrics, while Plaintiff was on approved leave in Michigan, diminished both the
12 enjoyment and the value of Plaintiff's Fellowship, and left Plaintiff and his family stranded in
13 Michigan, thereby increasing Plaintiff's distress and disappointment.

14 63. As a further proximate result of Defendant Yahoo's termination of Plaintiff in
15 violation of public policy, Plaintiff has been required to retain legal assistance, and has
16 incurred costs and expenses to defend and exercise his statutory and contractual rights.
17 Plaintiff requests an award of attorney's fees.

18 64. The actions of Defendant Yahoo constitute "malice," "oppression," and "fraud"
19 as defined at California Civil Code Section 3294(c) and Plaintiff is entitled to punitive or
20 exemplary damages against Defendant Yahoo in an amount to be determined.

21 **FOURTH CAUSE OF ACTION**
22 **Violation of the California Unfair Competition Law**
23 **With Request for Injunctive Relief**
24 **Against Defendant Yahoo**

25 65. The allegations of paragraphs 1 through 64 are incorporated by reference into
26 this cause of action.

27 66. Plaintiff brings this action in his own name for his own benefit and on behalf of
28 the general public pursuant to California Business & Professions Code Section 17204.
Plaintiff is a person who has suffered injury in fact and has lost money or property as a

1 result of Defendant's unlawful, unfair, and fraudulent business practices.

2 67. Plaintiff is informed and alleges that within the last four (4) years Defendant
3 Yahoo has engaged and continues to engage in unlawful, unfair, and fraudulent business
4 practices, including but not limited to the use of the QPR Process as alleged above and the
5 making of untrue and misleading statements to current and prospective employees
6 concerning the QPR Process (collectively the "Practices"). The Practices violate the
7 California Unfair Competition Law (the "UCL"; Bus. & Prof. Code §§17200 et seq.).

8 68. The Practices include the following acts which have been, and continue to be,
9 performed by Defendant Yahoo as a continuing business practice:

10 68.1. The knowing and consistent use of the QPR Process to avoid
11 accountability under the federal WARN Act, without sufficient or proper advance notice, and
12 without the payment of compensation and benefits due to Yahoo's terminated employees
13 under the Act.

14 68.2. The knowing and consistent use of the QPR Process to avoid
15 accountability under the California WARN Act, without sufficient or proper advance notice,
16 and without the payment of compensation and benefits due to Yahoo's terminated
17 employees under the WARN Acts.

18 68.3. The knowing and consistent use of the QPR Process to permit
19 managers to engage in unlawful and discriminatory employment practices without any
20 safeguards, standards, or accountability.

21 68.4. The knowing and consistent use of the QPR Process to breach Yahoo's
22 contractual obligations to its employees, including but not limited to Yahoo's assumed duty
23 of good faith and honest dealing, by terminating employees for unjust, discriminatory, or
24 capricious reasons under the guise of just cause terminations.

25 69. As a proximate result of the Practices Defendant Yahoo has acquired and
26 continues to acquire money and property from others in violation of the UCL in an amount
27 not currently known and to be determined later.

28 70. As a further proximate result of the Practices Defendant Yahoo has obtained

1 an unfair advantage over its competitors. Defendant has benefited from the money and
2 property it wrongly obtained and has further benefited by operating outside the constraints
3 of the law. Equity requires that the money and property wrongly acquired should be
4 disgorged for the benefit of those wrongly deprived.

5 71. Plaintiff is informed and alleges that unless restrained and enjoined from the
6 continued violation of the UCL as alleged above, Defendant will continue to violate the UCL
7 in derogation of the public policy and laws of the State of California and to the detriment of
8 thousands of its citizens.

9 72. There is no adequate remedy at law available to Plaintiff and this Court is
10 empowered to issue an injunction enjoining Defendant Yahoo from the continued
11 performance of the Practices, and to issue orders for the appointment of a receiver as may
12 be necessary, and to restore to any person any money or property acquired by Defendant,
13 all pursuant to California Business and Professions Code Section 17203.

14 **FIFTH CAUSE OF ACTION**
15 **Request for Declaratory Relief, Damages, and Penalties**
16 **Concerning Defendant Yahoo's QPR Process**

17 73. The allegations of paragraphs 1 through 72 are incorporated by reference into
18 this cause of action.

19 74. A controversy has arisen and currently exists between Plaintiff and Defendant
20 Yahoo in that Plaintiff alleges that Defendant Yahoo's use of the QPR Process violates the
21 WARN Acts, is knowingly and routinely used for discriminatory purposes in a manner to
22 avoid accountability, and operates in breach of Yahoo's duties of good faith and honest
23 dealing assumed by Yahoo in its writings and statements. Plaintiff further asserts that
24 terminations under the QPR Process are not terminations for cause pursuant to 20 USC
25 Section 2101(a)(6)(A) and do constitute layoffs for purposes of California Labor Code
26 Section 1400(c). Defendant Yahoo denies each of those allegations. Plaintiff requests a
27 declaration concerning Defendant Yahoo's QPR Process, including Plaintiff's rights and
28 remedies under the Warn Acts and pursuant to the Declaratory Judgment Act (28 U.S.C. §§
2201-2202).

1 **FIRST COUNT**
2 **Defendant Yahoo's QPR Process Violates the Federal WARN Act**
3 **and Plaintiff is Entitled to Damages and Penalties**

4 75. Plaintiff requests a judicial declaration that Defendant Yahoo's use of the QPR
5 Process constitutes a violation of the federal WARN Act and that pursuant to 29 U.S. Code
6 Section 2104(a) Plaintiff is entitled to statutory damages and penalties for 60 days including:

7 75.1. Back pay for each day of violation at a rate of compensation not less
8 than the higher of (i) the average regular rate received by Plaintiff during the last 3 years of
9 the employee's employment; or (ii) the final regular rate received by Plaintiff;

10 75.2. Benefits under Plaintiff's employee benefit plan, including the cost of
11 medical expenses incurred during the employment loss which would have been covered
12 under an employee benefit plan if the employment loss had not occurred;

13 75.3. A civil penalty of \$500.00 a day for each day that Plaintiff was entitled
14 to have received notice under the federal WARN Acts but did not do so;

15 75.4. Reasonable attorney's fees required for this declaration and recovery
16 of Plaintiff's statutory damages and penalties.

17 76. Plaintiff requests a judicial declaration that Defendant Yahoo's officers and
18 directors who directly operated Defendant's facilities and who intentionally caused the
19 violation of the federal WARN Act as alleged above are personally liable for Defendant
20 Yahoo's federal WARN Act damages and penalties.

21 **SECOND COUNT**
22 **Defendant Yahoo's QPR Process Violates the California WARN Act**
23 **and Plaintiff is Entitled to Damages and Penalties**

24 77. Plaintiff requests a judicial declaration that Defendant Yahoo's use of the QPR
25 Process constitutes a violation of the California WARN Act and that pursuant to Labor Code
26 Section 1402(a) Plaintiff is entitled to statutory damages and penalties for 60 days including:

27 77.1. Back pay at the average regular rate of compensation received by
28 Plaintiff during the last three years of his employment, or Plaintiff's final rate of
29 compensation, whichever is higher;

77.2 The value of the cost of any benefits to which Plaintiff would have been

1 entitled had his employment not been lost, including the cost of any medical expenses
2 incurred by Plaintiff that would have been covered under an employee benefit plan.

3 77.3. A civil penalty of \$500.00 a day for each day that Plaintiff was entitled
4 to have received notice under the California WARN Act but did not do so.

5 77.4. Reasonable attorney's fees required for this declaration and recovery
6 of Plaintiff's statutory damages and penalties pursuant to Labor Code Section 1403.

7 78. Plaintiff requests a judicial declaration that Defendant Yahoo's officers and
8 directors who directly operated Defendant's facilities and who caused the violation of the
9 California WARN Act as alleged above are personally liable for Defendant Yahoo's
10 California WARN Act damages and penalties.

11 **THIRD COUNT**
12 **Defendant Yahoo's QPR Process Knowingly Facilitates**
13 **Discriminatory and Unfair Employment Practices**

14 79. Plaintiff requests a judicial declaration that Defendant Yahoo, through the
15 actions of its highest ranking executives, has knowingly permitted its managers to use the
16 QPR Process to t engage in unlawful and discriminatory employment practices and make
17 employment decisions based on personal bias without accountability.

18 **FOURTH COUNT**
19 **Defendant Yahoo's QPR Process Violates Yahoo's**
20 **Assumed Duty of Good Faith and Honest Dealing**

21 80. Plaintiff requests a judicial declaration that Defendant Yahoo has breached its
22 legal and contractual obligations to its employees by using the discriminatory application of
23 the QPR Process to claim just cause for terminations which were capricious, arbitrary, and
24 the product of bias. As a result of this misdirection employees were terminated without just
25 cause, as part of regular and coordinated quarterly layoffs, under the pretense of
26 performance-related reasons for the layoffs.

27 **DEMAND FOR TRIAL BY JURY**

28 81. Plaintiff requests that his claims be tried to a jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant Yahoo as follows:

1 1. For general damages due to gender-based discrimination in violation of the
2 FEHA in a sum not currently known, and to be determined according to proof;

3 2. For special damages due to gender-based discrimination in violation of FEHA
4 in a sum not currently known, and to be determined according to proof including but not
5 limited to lost wages in the form of back pay and front pay, as well as lost benefits, bonuses,
6 and stock rights;

7 3. For general damages due to gender-based discrimination in violation of Title
8 VII in a sum not currently known, and to be determined according to proof;

9 4. For special damages due to gender-based discrimination in violation of Title
10 VII in a sum not currently known, and to be determined according to proof including but not
11 limited to lost wages in the form of back pay and front pay, as well as lost benefits, bonuses,
12 and stock rights;

13 5. For general damages due to employment termination by Yahoo in violation of
14 public policy in a sum not currently known, and to be determined according to proof;

15 6. For special damages due to employment termination by Yahoo in violation of
16 public policy in a sum not currently known, and to be determined according to proof
17 including but not limited to lost wages in the form of back pay and front pay, as well as lost
18 benefits, bonuses, and stock rights;

19 7. For punitive damages on Causes of Action 1, 2, and 3 in a sum not currently
20 known, and to be determined according to proof;

21 8. For restitution under California Business & Professions Code Section 17200 et
22 seq. in an amount not currently known and to be determined according to proof;

23 9. For an injunction prohibiting Defendant Yahoo's continued violation of
24 California Business & Professions Code Section 17200;

25 10. For a judicial declaration that Defendant Yahoo's use of the QPR Process
26 violates the federal WARN Act and that Plaintiff is entitled to back pay, benefits, and a civil
27 penalty of \$500.00 a day for each day that Plaintiff was entitled to have received notice
28 under the federal WARN Acts but did not do so, together with reasonable legal fees.

1 11. For a judicial declaration that Defendant Yahoo's use of the QPR Process
2 violates the California WARN Act and that Plaintiff is entitled to back pay, benefits, and a
3 civil penalty of \$500.00 a day for each day that Plaintiff was entitled to have received notice
4 under the federal WARN Acts but did not do so, together with reasonable legal fees;

5 12. For a judicial declaration that Defendant Yahoo's officers and directors who
6 intentionally caused the violation of the federal WARN Act as alleged above are personally
7 liable for Defendant Yahoo's federal WARN Act damages and penalties;

8 13. For a judicial declaration that Defendant Yahoo's officers and directors who
9 directly operated Defendant's facilities and who caused the violation of the California WARN
10 Act as alleged above may be personally liable for Defendant Yahoo's California WARN Act
11 damages and penalties California pursuant to California Labor Code Sections 1400-1408;

12 14. For a judicial declaration that Defendant Yahoo has permitted its managers to
13 use the QPR Process to avoid accountability and to engage in unlawful and discriminatory
14 employment practices and caused Plaintiff damages;

15 15. For a judicial declaration that Defendant Yahoo has breached its contractual
16 obligations to its employees by using the QPR Process to claim just cause for terminations
17 which were capricious, arbitrary, and the product of bias and caused Plaintiff damages;

18 16. For attorney's fees and costs of suit incurred herein; and

19 17. For such other and further relief as the Court deems just and proper.

20 Dated: February 1, 2016

Jon R. Parsons Law Firm

21 

22 by Jon R. Parsons
23 Attorney for Plaintiff
24 Gregory Anderson

25 **DEMAND FOR TRIAL BY JURY**

26 Plaintiff requests that his claims be tried to a jury.
27
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