SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MICHAEL KATZ,	:	Index No. _____/13
Plaintiff,	:	
-against-	:	
YAHOO! INC.,	:	
Defendant.	:	

COMPLAINT

Plaintiff Michael Katz, by his attorneys, Debevoise & Plimpton LLP, for his Complaint against Defendant Yahoo! Inc. ("Yahoo"), alleges as follows:

Preliminary Statement

1. This action arises from Yahoo's decision to cheat a young entrepreneur out of guaranteed compensation which Yahoo promised to him in order to induce him to sell his company to Yahoo.

2. In December 2011, Yahoo acquired interclick, inc. ("interclick"), an innovative and highly successful online advertising technology company founded, built and co-headed by Plaintiff Michael Katz. At the time, Yahoo's own digital advertising business was severely underperforming, and Yahoo desperately needed the infusion of market-leading technology, entrepreneurial spirit, and advertising sales experience that the interclick acquisition would provide.

3. To induce Mr. Katz (then 32 years old) to sell, Yahoo offered him continued employment in the post-acquisition company and guaranteed compensation in various forms.

4. Just a year after acquiring his company, though, Yahoo terminated Mr. Katz's employment without cause in a manner orchestrated to try to cheat him out of the compensation he was promised during negotiation of the acquisition and to humiliate him as well. On the evening of December 9, 2012 (a Sunday and the second night of Mr. Katz's Hanukkah observance), Mr. Katz was summoned from his home to meet at a bar with Yahoo's head of human resources. Despite the fact that his performance evaluations had been stellar, and that he was hailed as a "great visionary" by Yahoo's former CEO that same month, Mr. Katz was told that he was being terminated, without warning, effective almost immediately.

5. Yahoo's rush to terminate Mr. Katz without warning or cause in December was, transparently, designed to give Yahoo a basis to try to disavow its promises and withhold compensation that would otherwise have been payable in the near term. Mr. Katz has been deprived of equity vestings that would have been due at year-end and in subsequent tranches in March 2013, cash compensation that would have been payable on January 1, as well as additional guaranteed compensation that would have been payable in subsequent years.

6. Mr. Katz therefore brings this action to recover the consideration he was promised. Yahoo is free to build its company through acquisitions of innovative ventures created and built by visionary young entrepreneurs. But Yahoo should be held to the

promises it makes in order to induce such entrepreneurs to sell, and Yahoo should face the legal consequences of having tried to cheat one such entrepreneur out of his due in humiliating fashion.

The Parties

7. Michael Katz is an individual who resides in New York, New York.

8. Upon information and belief, Yahoo is a corporation organized and existing under the laws of Delaware, with its principal place of business at 701 1st Avenue, Sunnyvale, California 94089.

Jurisdiction and Venue

9. This Court has jurisdiction over Yahoo pursuant to CPLR 301 and 302.

10. Venue in New York County is proper under CPLR 503 because Mr. Katz resides in New York County.

Factual Background

Mr. Katz's Background at interclick

11. Mr. Katz founded interclick in May 2005. He served at various times as interclick's CEO and president until it was acquired by Yahoo in December 2011.

12. interclick developed and sold a proprietary Open Segment Manager (OSM) platform, a complete solution used by digital marketers to organize and evaluate billions of data points daily to construct optimally responsive digital audiences for advertising. interclick's technology allowed companies to advertise to particularly specified audiences of their choosing across a range of platforms. interclick's technology

provided uniquely valuable analyses to digital advertisers that allowed them to optimize their digital advertising investments.

13. As founder and president, Mr. Katz led interclick from its initial startup phase, to a successful initial public offering on the NASDAQ exchange in November 2009, and beyond.

14. Under Mr. Katz's leadership, interclick beat Wall Street expectations 17 consecutive quarters and experienced greater than 1000% revenue growth in 5 years to $140 million.

Yahoo's Acquisition of interclick

15. In 2011, Yahoo was in a precarious condition.

16. Yahoo had been unable to keep up with web search competitors, and had begun outsourcing its core search functionality to Microsoft Corporation.

17. Yahoo relied on advertising revenue, but its inventory of digital advertising space exceeded demand. Yahoo was regularly forced to sell off excess inventory to third party advertising networks. These third party networks were able to sell this inventory at a higher price, leading to huge losses of revenue opportunities for Yahoo.

18. According to a November 1, 2011 *Online Media Daily* article, Yahoo's interim CEO, Tim Morse, "conceded in the company's third-quarter conference call that it needed to improve yield on its nonguaranteed ad inventory." Yahoo was in need of technology to increase the value of its inventory to potential customers and the human capital necessary to sell this inventory directly to advertisers.

19. interclick fit Yahoo's needs perfectly. It had developed the relevant technology and had an experienced sales network. Yahoo sought to acquire interclick's unique data targeting capabilities and optimization technologies as well as its seasoned sales team, which had valuable experience packaging and selling audiences across disparate sources of pooled supply.

20. In June 2011, Yahoo approached interclick for preliminary discussions regarding the acquisition of interclick technology and personnel by Yahoo. By early August of 2011, Yahoo and interclick began oral discussion of terms of an acquisition deal.

Inducements Promised to Mr. Katz

21. During the course of negotiations, Yahoo agreed to purchase interclick and to retain its key personnel for a combination of cash, equity, salaried employment, and bonus compensation.

22. In order to induce Mr. Katz and his team to sell their company to Yahoo, Yahoo offered Mr. Katz and other interclick senior personnel, among other things, employment with Yahoo and a substantial pool of guaranteed, non-discretionary bonus compensation.

23. Pursuant to a letter agreement dated as of October 28, 2011, Yahoo employed Mr. Katz as a senior executive, contingent on the closing of the acquisition of interclick by Yahoo. The letter agreement provided that Mr. Katz would be paid a base salary of $400,000 per year. The letter agreement also promised that Yahoo would pay substantial additional compensation for Mr. Katz's labor and services above his base

salary. Specifically, it provided that "it is Yahoo!'s intention that you will receive a total compensation package with an annual target value of $640,000.00, an amount that includes applicable incentive plan payments." Mr. Katz accepted Yahoo's offer of employment and agreed to the sale of his company based on this explicit promise contained in the letter agreement.

24. During the merger negotiations, Yahoo also agreed to set aside a substantial pool of cash to be paid to senior interclick personnel as so-called "retention bonus" compensation. Through its lead negotiator and Head of Corporate Development, Yahoo represented to Mr. Katz that this pool of cash consideration would be styled as "retention bonus" compensation for regulatory reasons, but was in fact equivalent to salary. Yahoo's lead negotiator and Head of Corporate Development further represented on behalf of Yahoo that, based on Yahoo's deal history and prior conduct, Mr. Katz could be assured of receiving these bonus payments as a matter of course. He specifically represented that Yahoo would not terminate Mr. Katz or other interclick personnel prior to receipt of their bonus payments, as doing so would be contrary to Yahoo's purposes in acquiring interclick. In short, the "retention bonus" was effectively guaranteed by Yahoo's lead negotiator and Head of Corporate Development. It was a material inducement for Mr. Katz and his team to sell their company to Yahoo.

25. A payment schedule for tranches of the "retention bonus" was set forth in a letter dated as of February 3, 2012. Under that schedule, Mr. Katz was to receive his first payment, in the amount of $1,350,000, within 30 days of January 1, 2013; his second payment, in the amount of $1,350,000, within 30 days of January 1, 2014; his third

payment, in the amount of $1,350,000, within 30 days after January 1, 2015; and his final payment, in the amount of $450,000, within 30 days after January 1, 2016. Although the letter purports to require that Mr. Katz be employed by Yahoo on the date of each payment in order to be eligible to receive it, the letter contains no integration clause and does not supersede Yahoo's oral promises, made by its lead negotiator and Head of Corporate Development during negotiation of the merger.

26. On information and belief, "retention bonus" payments from the same pool were paid in January 2013, as a matter of course and without any assessment of performance or other eligibility criteria, to over 150 other members of the interclick team who remain as Yahoo employees. The non-discretionary manner in which these payments were made reflect that the "retention bonus" pool was intended as guaranteed compensation and not as any sort of discretionary incentive compensation.

27. Based on the promises described above, Mr. Katz agreed to the acquisition of interclick by Yahoo, and he specifically agreed to exchange a portion of his interclick stock for cash and to roll the remainder of his interclick stock into Yahoo equity in the form of stock options and/or restricted stock. Under Mr. Katz's agreement with Yahoo, 12,628 stock options were to vest on December 31, 2012, with another 12,628 stock options vesting on March 31, 2013. In addition, Mr. Katz had 14,432 restricted shares which were to vest on March 21, 2013, and another 14,432 restricted shares which were to vest on March 21, 2014. As of December 31, 2012, Mr. Katz's Yahoo equity in the form of restricted shares and stock options would have had a value of close to $1 million.

Mr. Katz's Career at Yahoo

28. From the closing of Yahoo's acquisition of interclick on December 14, 2011 until his termination in December 2012, Mr. Katz served as a senior Yahoo executive and continued to run the interclick business.

29. Reflecting his exceptional performance, in January 2012, Mr. Katz's responsibilities at Yahoo were expanded to include all sales operations and data and performance optimization for the interclick and mid-market sales units of Yahoo.

30. By July of 2012, Yahoo was on their fifth CEO in less than one year. As Yahoo's financial performance continued to careen downward, Mr. Katz's unit was a rare bright spot, reflecting his talent and commitment. In December 2012, former Yahoo interim CEO Ross Levinsohn publicly hailed Mr. Katz as a "great visionary" on Twitter.

31. Mr. Katz's written performance evaluations during his tenure at Yahoo were stellar.

Mr. Katz's Termination

32. On the evening of Sunday, December 9, 2012, Mr. Katz was at home observing the second night of Hannukah when he received an email from Yahoo's head of human resources summoning him to meet her at a bar.

33. Mr. Katz left immediately to attend to what he was led to believe was a pressing work matter. Instead, after a year of industry-leading performance, Mr. Katz was told that he was being fired, without warning, effective as of December 14, 2012. merely two weeks before he was to be paid the first installment of his "retention bonus."

34. On information and belief, Yahoo's standard practice is to offer employees two-months notice prior to termination and to pay terminated employees a severance of four months base salary. By contrast, Yahoo gave Mr. Katz no advance notice of his termination, instead offering only to pay Mr. Katz a severance of four months of base salary if, and only if, Mr. Katz signed a full release of all claims against Yahoo. Mr. Katz did not agree to release his claims and has received no severance.

35. Mr. Katz's rushed termination clearly was structured and timed as an attempt to deprive him of the compensation he was promised during the merger negotiations. Among other things, Yahoo has refused to pay the $240,000 of non-salary compensation that he was guaranteed under his October 28, 2011 letter agreement and that would have been payable at year end; Yahoo has refused to pay the first tranche of the "retention bonus," in the amount of $1,350,000, which would have been payable within 30 days after January 1, 2013, and has refused to pay any subsequent tranches; and Yahoo has forfeited all of Mr. Katz's Yahoo stock options and restricted stock, including equity that was rolled over from Mr. Katz's interclick equity as part of the merger transaction.

First Cause of Action – Breach of Contract

36. Mr. Katz repeats and realleges all of the allegations above.

37. Mr. Katz entered into several binding, valid and enforceable contracts with Yahoo at or around the time he agreed to sell interclick to Yahoo. Among other contracts, these included: (i) Yahoo's agreement, as described in the October 28, 2011 letter agreement, that Mr. Katz would receive at least $640,000 in annual compensation at

Yahoo post merger, and (ii) Yahoo's oral agreement, made by its lead negotiator and Head of Corporate Development during negotiation of the merger, that the so-called "retention bonus" payments, described in a letter dated February 3, 2012, were effectively guaranteed compensation and that Yahoo would not terminate Mr. Katz in order to deprive him of such payments.

38. Mr. Katz performed in accordance with all of the terms of his contracts with Yahoo.

39. Yahoo has breached the contracts by failing to pay the amounts it had promised to pay.

40. Mr. Katz has suffered and will continue to suffer damages as a result of Yahoo's breach and refusal to provide the benefits to which Mr. Katz is entitled under his agreements with Yahoo.

Second Cause of Action – Promissory Estoppel

41. Mr. Katz repeats and realleges all of the allegations above.

42. Yahoo made clear, unambiguous promises to Mr. Katz, including promises that (i) Mr. Katz would receive at least $640,000 in annual compensation at Yahoo post merger, and (ii) that the so-called "retention bonus" payments were effectively guaranteed compensation and that Yahoo would not terminate Mr. Katz in order to deprive him of such payments.

43. In accepting Yahoo's offer to acquire interclick, and agreeing to roll a portion of his interclick equity over into Yahoo equity, Mr. Katz reasonably relied on Yahoo's promises.

44. Yahoo has deprived Mr. Katz of the value which he was promised.

Third Cause of Action –
Breach of Implied Covenant of Good Faith and Fair Dealing

45. Mr. Katz repeats and realleges all of the allegations above.

46. Yahoo has breached the covenant of good faith and fair dealing implied in the October 28, 2011 letter agreement and the oral promise to pay the "retention bonuses" described in the February 3, 2012 letter, by depriving Mr. Katz of essential aspects of the benefits to which he was entitled under those contracts.

Fourth Cause of Action – New York Labor Law

47. Mr. Katz repeats and realleges all of the allegations above.

48. New York Labor Law ("NYLL") § 193 prohibits employers from making "deductions" from an employee's wages or making "any charge against wages." For purposes of the New York Labor Law, "wages" includes "wage supplements."

49. Mr. Katz's guaranteed and non-discretionary annual compensation of at least $640,000 and his guaranteed and non-discretionary so-called "retention bonus" payments were wages or wage supplements under the New York Labor Law.

50. Yahoo's failure to pay these benefits to Mr. Katz constitutes an unauthorized deduction from or charge against Mr. Katz's wages or wage supplements in violation of New York Labor Law § 193. Further, under New York Labor Law § 198(1) -a, Mr. Katz is entitled to (i) an award of his attorney's fees and costs in pursuing his claims under § 193, and (ii) liquidated damages equal to 25% of the total amount of unpaid wages.

51. Mr. Katz has been damaged by Yahoo's violations of the New York Labor Law.

Prayer for Relief

WHEREFORE, Mr. Katz demands that judgment be entered in his favor and against Yahoo as follows:

a. That Mr. Katz be awarded damages in an amount to be determined at trial;

b. That Mr. Katz be awarded his attorneys' fees, costs and expenses;

c. That Mr. Katz be awarded pre-judgment and post-judgment interest; and

d. That Mr. Katz be awarded such other and further relief as the Court may deem just and proper.

Jury Demand

Mr. Katz demands a trial by jury of all issues as to which a jury trial may be had.

Dated: March 4, 2013
New York, New York

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