

1 GLEN A. SMITH (State Bar No. 106341)  
MEGAN E. GRAY (State Bar No. 181204)  
2 GREGORY L. VINSON (State Bar No. 190959)  
BAKER & HOSTETLER LLP  
3 600 Wilshire Boulevard  
Los Angeles, California 90017-3212  
4 (213) 624-2400

5 Attorneys for Plaintiff JOHN DOE,  
also known as Aquacool\_2000  
6  
7

8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10

11 JOHN DOE, also known as  
AQUACOOOL\_2000,

12 Plaintiff,

13 v.  
14

YAHOO! Inc., a Delaware corporation, and  
15 DOES 1-9, inclusive,

16 Defendants.  
17

Case No.:

**COMPLAINT FOR:**

- 1) **Invasion of Privacy**
- 2) **Breach of Contract**
- 3) **Negligent Misrepresentation**
- 4) **Unfair Competition and  
False Advertising**

18 Aquacool\_2000 alleges as follows:

19 1. Plaintiff John Doe, also known as Aquacool\_2000, is a resident of the state of  
20 Ohio. This action alleges violations of Aquacool\_2000's privacy interest, including improper  
21 disclosure of information relevant to his identity to a third party by Defendant Yahoo!

22 Aquacool\_2000 brings this cause of action as John Doe in order to preclude further damage to his  
23 privacy interests.

24 2. Upon information and belief, Defendant Yahoo!, Inc. is a Delaware  
25 corporation with its principal place of business within the state of California.

26 3. Aquacool\_2000 is unaware of the true names and capacities of defendants  
27 sued herein as DOES 1-9 inclusive, and therefore sues such DOE defendants by such fictitious  
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1 names. Aquacool\_2000 will amend his complaint to allege the true names and capacities as and  
2 when they have been ascertained. Upon information and belief, each such fictitiously named  
3 defendant is in some way responsible for the events or occurrences referred to herein.

4 4. Upon information and belief, each of the defendants was the agent, servant  
5 and/or employee of each of the remaining defendants and was acting within the purpose and scope of  
6 said agency, service and/or employment and with the permission/consent of its co-defendants.

7 5. This is a civil action arising under the statutory and common law of the State  
8 of California. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1332 in that  
9 Plaintiff and defendant are citizens of different states and the amount in controversy exceeds the  
10 value of \$75,000, exclusive of interest and costs. This Court has personal jurisdiction over  
11 defendants in that they are doing business in the State of California and they are committing the acts  
12 alleged in this State. Venue for this action is proper in the Central District pursuant to 28 U.S.C.  
13 §1391(a) in that defendants are subject to the personal jurisdiction of this judicial district.

14 **GENERAL ALLEGATIONS OF LAWSUIT**

15 6. Yahoo! is a portal on the World Wide Web that provides a variety of services  
16 to individuals and companies. Among the services provided by Yahoo! is a service called the  
17 message boards. Using the message-board service, Yahoo! members can submit (or post) comments  
18 and opinions about publicly traded companies. Yahoo! invites its members to "discuss the future  
19 prospects of the company and share information about it with others" in this forum. Every publicly  
20 owned company has a message board devoted to it, set up and fostered by Yahoo!

21 7. Yahoo! prompts its members to "select an identity" before posting comments  
22 and, in fact, most comments are posted by individuals using a pseudonym or *nome de plume*. The  
23 vast majority of the comments posted on these message boards are colloquial in tone, opinionated,  
24 speculative, and frequently caustic and derogatory. The comments tend to resemble informal spoken  
25 conversation more than formal written communication, and anyone who frequents the message  
26 boards interprets what is posted accordingly. The Yahoo! message boards are a forum where the  
27 common man may voice his opinion, however silly or brilliant it may be. Discussion of information

1 about the company and its management is common, but so too is idle speculation about its future  
2 stock price, random musings about its prospects, and even "off-topic" trivialities. On the  
3 AnswerThink message board, for example, discussion has recently focused on guitars.

4 8. The message boards also give users and the subject a unique opportunity to  
5 reply to speech on the message boards that they believe to be wrong or defamatory. A message-  
6 board user can promptly post a reply to an objectionable posting and, in many cases, the reply will  
7 reach the exact audience that read the initial posting.

8 9. Yahoo! is aware of the nature of the comments posted on the message boards  
9 and has taken efforts to advise members that the message boards are "not connected in any way"  
10 with the company being discussed. Yahoo! further advises its members that "any messages are  
11 solely the opinion and responsibility of the poster."

12 10. These unique features of the message boards suggest that defamation law  
13 should be applied carefully to these communications, lest the threat of being held liable for  
14 defamation chills users from engaging in the spirited discussions encouraged under state and federal  
15 constitutions. In fact, the United States Supreme Court has described the Internet as a "vast  
16 democratic fora" and has affirmed another court decision describing the Internet as "the most  
17 participatory form of mass speech yet developed and is entitled to the highest protection." Reno v.  
18 ACLU, 521 U.S. 844 (1997).

19 11. The United States and California constitutions protect the right to anonymous  
20 speech and the right to free speech. The United States Supreme Court, in McIntyre v. Ohio Elections  
21 Commission, 514 U.S. 334 (1995), firmly held that the First Amendment protects anonymous  
22 speech. The Court gave an impressive listing of important anonymous contributors ranging from  
23 Shakespeare to The Federalist Papers. The California constitution has even greater protections for  
24 free speech and privacy. See Rancho Publications v. Superior Court, 68 Cal. App. 4th 1538 (1999).  
25 While these constitutional rights are not absolute, they may not be disregarded merely on the filing  
26 of a lawsuit.



1           18. In its Terms of Service, Yahoo! informs its members that "Notices to you may  
2 be made via either email or regular mail," thereby creating a reasonable expectation in its members  
3 that Yahoo! will, in fact, provide notice of information important to its members.

4           19. The Privacy Policy further represents that Yahoo! is certified by TRUSTe,  
5 which is a third-party group supposedly regulating and reviewing certified-companies' privacy  
6 practices. By featuring the TRUSTe certification mark throughout its website, Yahoo! thereby  
7 creates the reasonable expectation that Yahoo! maintains strict procedures and requirements with  
8 respect to Yahoo!'s disclosure of members' personal information. At a minimum, Yahoo!  
9 purposefully gives members the impression that Yahoo! is as protective of members' privacy as the  
10 member himself, and that Yahoo! would not disregard members' privacy interests without taking all  
11 reasonable steps to safeguard it or giving the opportunity to the member to safeguard it.

12           20. Yahoo has posted the Privacy Policy and TRUSTe certification mark in order  
13 to falsely gain members' confidence and to induce individuals to use the Yahoo! service and  
14 participate on the message boards. Yahoo! has acted with callous disregard of this public trust and  
15 reliance.

16           21. Yahoo! does not inform or in any way notify a member when Yahoo! receives  
17 a subpoena for the member's private information.

18           22. Pursuant to the rulings in Columbia Insurance Co. v. Seescandy.com, 185  
19 F.R.D. 573 (N.D. Cal. 1999), National Labor Relations Board v. Micklin Daily News, 151 F.3d 472  
20 (6th Cir. 1998), and Rancho Publications v. Superior Court, 68 Cal. App. 4th 1538 (1999), Yahoo!  
21 is, in fact, under no legal obligation to supply members' personal information in response to  
22 premature subpoenas.

23           23. Yahoo! is well aware of the fact that defamation lawsuits have been, and will  
24 likely continue to be filed against some members who post comments on the message boards.  
25 Indeed, Yahoo! has full-time employees whose primary job responsibility is to respond to subpoenas  
26 for members' information. On information and belief, Yahoo! receives hundreds of civil subpoenas  
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1 every year for information identifying members who have posted comments critical of publicly held  
2 companies on the Yahoo! message boards.

3           24. On information and belief, Yahoo! knows or has reason to know that many of  
4 the lawsuits seeking members' personal information are frivolous and would not withstand a motion  
5 to dismiss. Yahoo! is aware that executives at publicly owned companies that are featured on the  
6 message boards frequently take umbrage at the critical comments posted about "their" companies on  
7 the message boards. With sensitive egos and money to burn, such companies often file a lawsuit  
8 merely in order to obtain the right to subpoena Yahoo! for members' information so that the  
9 company's curiosity and desire to silence the member can be satiated. This phenomenon has been  
10 chronicled in numerous media. Nonetheless, the subject of the lawsuit is unable to mount such a  
11 defense prior to Yahoo!'s disclosure of personal information -- solely because the defendant is not  
12 notified by Yahoo! of the lawsuit or the subpoena.

13           25. On information and belief, Yahoo practices lax standards for responding to  
14 subpoenas. Yahoo! does not require subpoenas to be personally served, as required by statute, and  
15 does not require out-of-state subpoenas to be authorized by issuance of a court commission, as also  
16 required by statute. Rather, Yahoo! will accept facsimile service of any document referring to itself  
17 as a subpoena and does not insist on compliance with minimum statutory requirements.

18           26. Yahoo! does not confirm that lawsuits providing subpoena power have been  
19 served on defendants or that such lawsuits have complied with various state or federal statutes  
20 placing a mandatory hold on subpoenas and other discovery devices until a certain amount of time  
21 following the filing of a lawsuit. On information and belief, Yahoo! knows or should reasonably be  
22 expected to know that many subpoenas it receives, if not the vast majority of such subpoenas, are  
23 issued in violation of such state or federal requirements.

24           27. As one of the largest, if not the largest portal on the Internet, Yahoo! has a  
25 large impact on the exercise of the public's rights of free speech and freedom of expression in  
26 cyberspace.



1 **SPECIFIC ALLEGATIONS OF LAWSUIT**

2 33. Aquacool\_2000 participated in the message boards with the reasonable  
3 expectation that Yahoo! would not disclose his identity or personal information to any third party  
4 without his consent or, at a minimum, without giving him notice prior to the disclosure of any such  
5 information. At no time did Aquacool\_2000 knowingly or voluntarily waive his rights to privacy  
6 and anonymous speech.

7 34. On or before October 21, 1999, Aquacool\_2000 became a Yahoo! message  
8 board member and participated in discussion on the message boards by posting comments about the  
9 publicly traded company AnswerThink Consulting Group, Inc. Plaintiff, using the pseudonym  
10 "aquacool\_2000," posted a number of comments that criticized and even ridiculed AnswerThink's  
11 management. For example, apparently referring to AnswerThink's management team,  
12 Aquacool\_2000 stated "One of them is an arrested adolescent whose favorite word is 'turd.' One is  
13 so dull that a 5-watt bulb gives him a run for the money. And the third believes that the faster you  
14 go in your car, the smarter you get." These sometimes hyperbolic statements of opinion clearly  
15 could not be understood by anyone who read them to be assertions of fact. Consequently, the  
16 statements cannot, as a matter of law, be considered defamatory.

17 35. On or about February 23, 2000 AnswerThink filed a meritless complaint for  
18 defamation against several Doe defendants, including Aquacool\_2000, in U.S. District Court for the  
19 Southern District of Florida based upon statements that Aquacool\_2000 and others posted on the  
20 AnswerThink message board operated by Yahoo!.

21 36. On or about March 7, 2000, before AnswerThink made any attempt to serve  
22 any of the defendants in that lawsuit, or seek leave of court to issue subpoenas prior to such service,  
23 AnswerThink caused a subpoena to be served on Yahoo! seeking the disclosure of personal  
24 information, including identity, of Aquacool\_2000 and, on information and belief, numerous other  
25 message-board members.

26 37. Without taking any steps to notify Aquacool\_2000 or obtain his consent,  
27 without taking any steps to determine the validity of the subpoena, and without taking any steps to  
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1 determine Yahoo!'s legal obligation to supply the requested personal information pursuant to the  
2 subpoena, Yahoo! disclosed to attorneys for AnswerThink personal information regarding  
3 Aquacool\_2000.

4 38. Had Yahoo! taken the minimal step of notifying Aquacool\_2000 prior to  
5 disclosure of his personal information, Aquacool\_2000 would have had an opportunity to move for a  
6 protective order and/or a motion to quash the AnswerThink subpoena under the law established by  
7 the cases cited above in an effort to protect his privacy and his constitutionally protected right to  
8 speak anonymously.

9 39. Following the disclosure of Aquacool\_2000's personal information by  
10 Yahoo!, AnswerThink filed a second lawsuit against Aquacool\_2000 for defamation and other  
11 causes of action in United States District Court for the Central District of Florida. Moreover,  
12 AnswerThink wrongfully terminated Aquacool\_2000 from its employ and wrongfully denied him  
13 compensation due him.

14 **FIRST CAUSE OF ACTION**

15 **(Violation of Constitutional Privacy Rights)**

16 40. Aquacool\_2000 repeats and incorporates by reference the allegations of the  
17 paragraphs above.

18 41. Aquacool\_2000, under the First Amendment to the United States Constitution,  
19 Article I, Section 1 of the California Constitution and the common law, maintains a legally protected  
20 privacy interest in the personal information he provided Yahoo!, as well as a legally protected  
21 privacy interest in the information that Yahoo! has collected about him as a result in his participation  
22 in its services.

23 42. Aquacool\_2000, pursuant to the First Amendment, Article I, Section 1 of the  
24 California Constitution, the common law and the terms of Yahoo!'s Terms of Service and Privacy  
25 Policy, had a reasonable expectation that the personal information he supplied to Yahoo!, and the  
26 personal information that Yahoo! collected from him, would not be disclosed to any third party  
27 without his prior consent or, at the very least, without prior notice to him.





1 **THIRD CAUSE OF ACTION**

2 **(Negligent Misrepresentation)**

3 57. Aquacool\_2000 repeats and incorporates by reference the allegations of the  
4 paragraphs above.

5 58. Yahoo! has represented and continues to represent to its members, both on its  
6 website and in its Privacy Policy, that it will defend and protect its members' privacy interests. For  
7 example, Yahoo! has represented and continues to represent that it will notify its members if their  
8 personal data will be shared with a third party and that its members will "always have the option of  
9 not permitting the transfer" of their personally identifiable information.

10 59. When Yahoo! made these representations, and other similar representations, it  
11 had no reasonable ground to believe them to be true, in that Yahoo! routinely discloses the personal  
12 information of its members in response to subpoenas seeking the same, without its members'  
13 consent, and without notifying its members prior to such disclosure. Moreover, Yahoo! routinely  
14 makes these disclosures without taking any steps whatsoever to determine whether the subpoenas it  
15 responds to are, in fact, valid, or if Yahoo! has any legal obligation to disclose the information that is  
16 requested by the subpoenas.

17 60. Yahoo! further made these representations, and other similar representations,  
18 with the intention of inducing Aquacool\_2000 to act in reliance on such representations in the  
19 manner herein alleged, or with the expectation that Aquacool\_2000 would so act.

20 61. Aquacool\_2000 reasonably relied on the foregoing representations made by  
21 Yahoo! and submitted his personal information to Yahoo! and allowed Yahoo! to collect further  
22 personal information related to his interests and habits, for the purpose of registering as a message-  
23 board member.

24 62. As a result of his reliance on Yahoo!'s misrepresentations, Aquacool\_2000  
25 has suffered personal injury and other losses in an amount subject to proof at trial.

1 **FOURTH CAUSE OF ACTION**

2 **(Unfair Competition and False Advertising)**

3 63. Aquacool\_2000 repeats and incorporates by reference the allegations set forth  
4 in the paragraphs above.

5 64. California Business and Professions Code § 17200 prohibits acts of unfair  
6 competition, which include "any unlawful, unfair or fraudulent business act or practice." Business  
7 and Professions Code § 17500 prohibits false advertising. A violation of § 17500 also constitutes a  
8 violation of § 17200.

9 65. As alleged above, Yahoo!, in connection with the services it provides, has  
10 caused to be published false and misleading statements that Yahoo! knew, or in the exercise of  
11 reasonable care, should have known to be false or misleading, all in violation of Business and  
12 Professions Code §§ 17200 and 17500.

13 66. Pursuant to these provisions of the Business and Professions Code,  
14 Aquacool\_2000 is entitled to an order or judgment enjoining Yahoo! from engaging in further  
15 unlawful, unfair or fraudulent acts or practices and for orders of disgorgement and restitution.  
16 Aquacool\_2000 is further entitled to an award of his attorneys' fees and costs as permitted by those  
17 provisions and Code of Civil Procedure § 1021.5.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Aquacool\_2000 prays for relief and judgment as follows:

20 (a) An award of compensatory damages for all personal and economic harms  
21 suffered by Aquacool\_2000 as a result of Yahoo!'s actions;

22 (b) Exemplary and punitive damages as permitted by law;

23 (c) Attorneys' fees and costs of the suit incurred herein;

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(d) A permanent injunction prohibiting the release of private information without specific and prior notice to Yahoo!'s members; and

(e) Such other and further relief as the court may deem proper and just.

Dated: May \_\_, 2000

GLEN A. SMITH  
MEGAN E. GRAY  
GREGORY L. VINSON  
BAKER & HOSTETLER LLP

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Megan E. Gray  
  
Attorney for Plaintiff JOHN DOE,  
also known as Aquacool\_2000