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13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **OAKLAND DIVISION**

16 WANG XIAONING, YU LING, SHI TAO,
17 and ADDITIONAL PRESENTLY
18 UNNAMED AND TO BE IDENTIFIED
19 INDIVIDUALS,

20 Plaintiff,

21 v.

22 YAHOO!, INC., a Delaware Corporation,
23 YAHOO! HONG KONG, LTD., a Foreign
24 Subsidiary of Yahoo!, AND OTHER
25 PRESENTLY UNNAMED AND TO BE
26 IDENTIFIED INDIVIDUAL EMPLOYEES
27 OF SAID CORPORATIONS,

28 Defendant.

Case No. C07-02151 CW

**JOINT CASE MANAGEMENT
STATEMENT AND REPORT PURSUANT
TO FEDERAL RULE OF CIVIL
PROCEDURE 26(F)**

Conference Date: November 1, 2007

Time: 2:00 p.m.

Judge: Hon. Claudia Wilken

1 Plaintiffs Wang Xiaoning, Shi Tao and Yu Ling (“Plaintiffs”), Defendant Yahoo!, Inc.
2 and specially appearing Defendant Yahoo! Hong Kong, Ltd. (“YHKL,” collectively
3 “Defendants”) respectfully submit this Joint Report pursuant to Northern District Local Rule 16-
4 9(a) and Rule 26(f) of the Federal Rules of Civil Procedure. Portions of this Joint Report contain
5 factual and legal contentions by one side strongly contested by the other. Either side’s silence in
6 response to such contentions is not an indication of consent. Both sides reserve their right to
7 respond at the appropriate time.

8 Plaintiffs wish to indicate that while this Joint Case Management Statement reflects the
9 good faith efforts of the parties to discuss and resolve a variety of issues and needs associated
10 with the case management process, the current posture of the lawsuit limits the parties’ present
11 abilities to completely identify and narrow all relevant disputed facts, issues, and legal arguments.
12 Therefore the Statement is not, and should not be taken as, a substitute for the more complete
13 rendition of the facts and legal issues presented by their Second Amended Complaint, and by
14 presently pending motions and other pleadings before the Court.

15 **I. JURISDICTION AND SERVICE**

16 Plaintiffs’ Statement

17 Plaintiffs’ assert that this Court has jurisdiction over Plaintiffs’ claims pursuant to 28
18 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1350 (Alien Tort Statute, “ATS,” and
19 Torture Victim Protection Act, “TVPA”), and the Electronic Communications Privacy Act, 18
20 U.S.C. § 2701 et seq., and supplemental jurisdiction over claims arising from violations of state
21 law because, pursuant to 28 U.S.C. § 1367, the facts in the claims arising from state law are so
22 related to the Plaintiffs’ claims under federal laws that they form part of the same case or
23 controversy under Article III of the United States Constitution.

24 Plaintiffs properly served Defendants on May 30, 2007. Both Defendants have accepted
25 service, without waiving other jurisdictional defenses, and there are no outstanding claims
26 disputing adequacy of service.

1 Defendants' Statement

2 As argued in their motions to dismiss, defendants assert that plaintiffs' claims present
3 political questions, are otherwise non-justiciable, and that the Court lacks subject matter
4 jurisdiction in this case. *See, e.g., Corrie v. Caterpillar, Inc.*, No. 05-36210, slip. op. 12498 (9th
5 Cir. Sept. 17, 2007) (holding that court lacked subject matter jurisdiction where Alien Tort Statute
6 claim presented non-justiciable political question). Defendant YHKL further asserts that it is not
7 subject to personal jurisdiction in California, as explained in its separately filed Motion to
8 Dismiss for Lack of Personal Jurisdiction. Defendants accepted service pursuant to Rule 4(d)(1)
9 of the Federal Rules of Civil Procedure.

10 **II. FACTS**

11 Plaintiffs' Statement

12 Plaintiffs Wang Xiaoning, Yu Ling, Shi Tao and additional presently unnamed and to be
13 identified Plaintiffs ("Plaintiffs") have been subjected to grave violations of universally
14 recognized standards of international law, including the prohibition against torture, for exercising
15 their rights of freedom of speech and freedom of the press, at the hands of Defendants acting in
16 concert with Chinese officials acting under color of law in the People's Republic of China
17 (referred to herein as "the PRC" or "China").

18 Defendants willingly divulged Plaintiffs' identifying and contact information and the
19 nature and content of their use of electronic communications to Chinese officials that led directly
20 to the Plaintiffs' arbitrary arrest, long-term detention, and torture. Defendants knew or had
21 substantial reason to know the consequences of their actions, that the purposes of the requests
22 from the Chinese officials were not legitimate or lawful, and were designed to abridge Plaintiffs'
23 well-recognized human rights.

24 Heavy emphasis is placed in the decisions of the Chinese courts imposing harsh sentences
25 upon the Plaintiffs, acknowledging that Defendants played a critical and substantial role in the
26 process, thereby indicating that Defendants knowingly and willfully aided and abetted in the
27 commission of torture and other major human rights abuses.

28 Since approximately 2001-2002 to the present, Defendants have operated under at least

1 three different organizational and structural arrangements and agreements as regards Yahoo!'s
2 operations in China. Each successively sought to reduce the appearance of control by, and
3 connections with, the U.S. parent Yahoo!, Inc. over China operations, for reduction of potential
4 liability (and presumably other) purposes. However, indications of continued control and
5 supervision by Yahoo!, Inc. over China operations remained considerable under all these
6 corporate arrangements, with the highest level officials of Yahoo!, Inc. testifying to Congress that
7 they were responsible for making or approving the policy decision that their Chinese affiliates
8 should release Internet user identification information to Chinese officials.

9 Defendants' Statement

10 Any disclosure of information regarding plaintiffs Wang and Shi was proper and in
11 compliance with the laws of the People's Republic of China. Plaintiffs' own complaint cites to
12 the Hong Kong Privacy Commissioner's ruling in plaintiff Shi's case, which noted that "the
13 disclosure of information in the circumstances of this case was not a voluntary act initiated by
14 [YHKL] but was compelled under the force of PRC law."

15 In addition, there is no causal relationship between any conduct by defendants and
16 plaintiffs' claimed injury. Plaintiffs wrongly contend that such a causal relationship is supported
17 by plaintiffs Wang and Shi's criminal judgments. Those judgments, however, do not show that
18 defendants divulged plaintiffs' identities, caused them to be investigated, or provided proof
19 essential to their convictions. Both judgments cite various sources of evidence—including
20 physical evidence, witnesses, and plaintiffs' confessions—on which plaintiffs' convictions rested.
21 *See* Ex. B and C to Yahoo!'s Mot. to Dismiss. With regard to defendants, plaintiff Wang's
22 judgment indicates only that YHKL provided records that showed that two Yahoo! China email
23 accounts had been set up by users in China. *See* Ex. B at 6, ¶¶ e, f. Contrary to plaintiffs' claim
24 that the PRC learned Wang's identity from defendants, the judgment indicates that Wang
25 published articles using his real name. *Id.* at 11, ¶ 4 and 21, ¶ a. As for plaintiff Shi, the
26 judgment against him indicates that the information YHKL provided merely helped confirm that
27 an email was sent from Shi's place of employment, not that Shi sent it. *Id.* at 4-5.

28 Defendants lack direct information that bears on many of the other allegations in

1 plaintiffs' complaint. As for plaintiffs' speculations regarding defendants' respective corporate
2 structures, they are groundless.

3 **III. LEGAL ISSUES**

4 Plaintiffs' Statement

5 Defendants have filed a series of motions to dismiss, and associated motions, including a
6 motion for a more definitive statement and a motion to strike certain causes of action under the
7 California anti-SLAPP statute, which Plaintiffs are opposing, based on several disputed facts and
8 points of law, including but not limited to the following:

- 9 a. Whether the Act of State Doctrine, Political Question Doctrine, principles of
10 international comity and other political and foreign policy issues preclude the
11 Plaintiffs' claims on the basis of justiciability concerns that speak to an
12 alleged lack of subject matter jurisdiction (Rule 12(b)(1)), an alleged failure
13 to state a claim for which relief can be granted (Rule 12(b)(6)), and an
14 alleged absence of an indispensable party (12(b)(7));
- 15 b. Whether the Plaintiffs have set out adequate causes of action, and provided
16 adequate factual support for their claims against Defendants, under both
17 federal and state law.
- 18 c. Whether the Defendants' communications with Chinese law enforcement
19 officials were privileged, and lawfully mandated under Chinese law, and
20 associated with a law enforcement process with adequate procedural
21 safeguards;
- 22 d. Whether the PRC is an indispensable party to the lawsuit; and
- 23 e. Whether this Court has personal jurisdiction over Defendant Yahoo! Hong
24 Kong, Ltd., formerly known as Yahoo Holdings (Hong Kong), Ltd.

25 Plaintiffs have filed a motion for initial and jurisdictional discovery, which Defendants are
26 opposing, based on whether the nature and extent of the Defendants' motions to dismiss and
27 associated motions, and the accompanying documentary materials, make it necessary for the
28 Plaintiffs to conduct initial fact-gathering in order to properly respond.

1 Additional issues identified in the pleadings thus far include but are not limited to:

- 2 a. Whether Yahoo! Inc. can be held responsible under principles of agency,
3 alter ego, or piercing the corporate veil for the actions of its Chinese
4 subsidiaries and partners;
- 5 b. The degree of Yahoo! Inc.'s involvement and control over the actions of
6 its Chinese subsidiaries and partners at the time to abuses took place.

7 Plaintiffs reject Defendants' claim that Yahoo!, Inc., as the parent, U.S. based entity, is not
8 responsible for the actions of its Chinese affiliates, pointing out that the present organizational
9 structure that Yahoo! currently operates under for its China activities, that were the subject of a
10 declaration submitted by Yahoo! Hong Kong's Managing Director that was attached to their
11 motions to dismiss, was not the organizational structure in effect in prior years when the role and
12 responsibilities of Yahoo!, Inc. were even greater. Yahoo!, Inc. exercised decision-making
13 authority over the specific actions taken by Yahoo!'s China affiliates that relate to the abuses in
14 question, and are the subject of this litigation.

15 Plaintiffs reject Defendants' position that Plaintiffs contributed to and assumed the risk for
16 their own abuse by choosing to exercise their free press and free speech rights by communicating
17 on the Internet.

18 Plaintiffs oppose Defendants' claim that the Government of China is a necessary and
19 indispensable party to the case, with act of state and international comity consequences, as well as
20 their arguments that the case negatively impacts political and foreign policy interests of the
21 United States, raising issues of non-justiciability.

22 Plaintiffs reject Defendants' claim that Yahoo! can not be held "indirectly" responsible or
23 accountable for actions and abuses carried out by officials of the Government of China, pointing
24 out that Yahoo!'s actions were not as indirect as claimed, but directly produced the abuses in
25 question, and that principles of aiding and abetting apply to Yahoo!'s actions as they relate to
26 violations of international law under the ATCA, and to acts of torture under the TVPA.

27 Additional disputed questions of fact and law beyond those set out above are to be
28 identified from the initial and jurisdictional discovery process, and from the Defendants' Answer

1 to the Complaint.

2 Defendants' Statement

3 Defendants do not believe this document is the appropriate forum to litigate their motions
4 to dismiss so will not respond to plaintiffs' arguments. The legal issues presented in this case
5 include, but are not limited to:

- 6 1. whether YHKL is subject to personal jurisdiction in California;
- 7 2. whether plaintiffs' claims are justiciable;
- 8 3. whether plaintiffs have stated a cognizable claim under the federal Alien Tort
9 Statute, the Torture Victim Protection Act, or the Electronic Communications
10 Privacy Act;
- 11 4. whether plaintiffs' have stated a state-law claim for negligence or intentional torts;
- 12 5. whether plaintiffs have standing to bring a claim under Cal. Bus. & Prof. Code
13 § 17200 and have stated a claim thereunder;
- 14 6. whether plaintiffs' claims are barred by California's statutory privilege for
15 communications with law enforcement and are subject to California's anti-SLAPP
16 statute;
- 17 7. whether defendants' communications with Chinese law enforcement officials are
18 privileged under federal, state, and international law;
- 19 8. whether the PRC is a necessary and indispensable party to this action;
- 20 9. whether plaintiffs have met their pleaders' obligations under Rules 8 and 11; and
- 21 10. whether plaintiffs' counsel have authority to prosecute this case.

22 **IV. MOTIONS**

23 On June 21, 2007, Yahoo! filed a Motion for Early Case Management Conference and
24 Order and a Motion to Shorten Time on that motion. Yahoo!'s Motion to Shorten Time and the
25 underlying Motion for Early Case Management Conference were denied, with the exception that
26 the Court granted Yahoo!'s request that a Statement of Interest in the case be solicited from the
27 U.S. Government. On August 23, 2007, the Court sent a letter to the U.S. State Department
28 requested that such Statement of Interest be provided by October 26, 2007. On August 15, 2007,

1 Defendants filed a Motion for Protective Order Governing Confidential Information. This
2 Motion was referred to Magistrate Judge Spero, who granted the Motion and signed a slightly
3 modified version of Defendants' Proposed Order on August 29, 2007.

4 On August 27, 2007, defendant YHKL filed a Motion to Dismiss for Lack of Personal
5 Jurisdiction, and defendant Yahoo! filed a Motion to Dismiss under Federal Rules of Civil
6 Procedure 12(b)(1), (6) and (7), as well as a Motion to Strike Plaintiffs' State Law Causes of
7 Action Pursuant to the California Anti-SLAPP Statute and an Alternative Motion for a More
8 Definite Statement. These motions are still pending, and plaintiffs have indicated their intention
9 to oppose them.

10 On September 14, 2007, plaintiffs filed a Motion to Initiate Initial and Jurisdictional
11 Discovery and a Motion to Enlarge Time to Respond to Defendants' Motions to Dismiss and
12 Associated Motions, Pending a Decision on Plaintiffs' Discovery Motion. The Court granted
13 Plaintiffs' Motion to Enlarge Time. As a result of that ruling, plaintiffs' oppositions to
14 defendants' August 27 Motions are now due either 1) 14 days after the Court denies initial and
15 jurisdictional discovery, or 2) 14 days after initial and jurisdictional discovery is complete.
16 Defendants intend to oppose plaintiffs' Discovery Motion, which is scheduled to be heard on
17 November 1.

18 **V. AMENDMENT OF PLEADINGS**

19 Plaintiffs' Statement

20 Plaintiffs intend, and reserve the right, to further amend their Second Amended
21 Complaint. It is anticipated that any additional plaintiffs who are identified will have the same or
22 similar claims as current Plaintiffs, and that any additional defendants who are identified will be
23 similarly implicated and liable as current Defendants. Additional abuses and violations may also
24 be identified and added to the pleadings based on information obtained during the proceedings,
25 and additional legal bases for the Plaintiffs' claims may be determined to exist.

26 Defendants' Statement

27 Defendants consented to plaintiffs' filing a Second Amended Complaint, which occurred
28 on July 19, 2007. Because defendants filed motions to dismiss on August 27, 2007, they have yet

1 to file an answer to the complaint. If defendants' motions to dismiss are denied, they will file a
2 timely answer.

3 **VI. EVIDENCE PRESERVATION**

4 Plaintiffs' Statement

5 Plaintiffs and their legal representatives are preserving any and all evidence that could
6 reasonably be related to this action. Plaintiffs' attorneys of record and their staff members are
7 taking similar action with respect to evidence coming to their attention.

8 Defendants' Statement

9 A litigation hold notice with respect to this action was circulated instructing that all
10 hardcopy and electronic files relating to issues presented in this case be maintained and further
11 instructing that policies that would otherwise result in the deletion or destruction of any such
12 documents and electronic files were superseded. In addition, hard copy and electronic records
13 related to the issues in this case were collected.

14 **VII. INITIAL DISCLOSURES**

15 Both parties are making their initial disclosures on September 28, 2007, in accordance
16 with Federal Rule of Civil Procedure 26(a)(1) and the Court's Order of July 26, 2007.

17 **VIII. DISCOVERY**

18 **A. Discovery Taken to Date**

19 On September 14, 2007, Plaintiffs filed a Motion to Initiate Initial and Jurisdictional
20 Discovery on issues raised in Defendants' Motions to Dismiss and accompanying motions. To
21 date, no party has served discovery.

22 **B. Subjects of Discovery (Fed. R. Civ. Pro. 26(f)(2))**

23 Plaintiffs' Statement

24 Plaintiffs have taken no discovery to date, but submitted a Proposed Initial and
25 Jurisdictional Discovery Plan on September 14, 2007, as an Exhibit with Plaintiffs' Motion to
26 Initiate Initial and Jurisdictional Discovery, seeking information held by the Defendants
27 including:
28

- 1 • Receipt of and or responses to requests from Chinese officials to Yahoo, and responses
2 and other communications related to these requests, associated with providing identifying
3 information of Internet users in China.
- 4 • Deliberations, decisions, communications, and policies on whether and how to respond to
5 such requests.
- 6 • Licensing agreements, contracts and other material associated with the organizational and
7 structural arrangements and responsibilities, methods of operations, ways of conducting
8 business, financial arrangements and other business activities involving Yahoo!, Inc. and
9 its Chinese affiliates, covering both past and present periods of time.
- 10 • Communications between and among Yahoo! Inc., Yahoo!'s Chinese affiliates, and
11 officials of the Government of China relative to requests for internet user information the
12 arrest and detention of Yahoo!'s internet users, and the Government of China's views on
13 this litigation.

14 Additional discovery will be required on other matters not covered by the initial discovery
15 plan, based on information obtained through initial discovery and from the Defendants'
16 Answer.

17 Defendants' Statement

18 Defendants will need discovery on, without limitation, the following subjects:

- 19 • the circumstances related to plaintiffs Wang and Shi's arrest;
- 20 • the circumstances related to Wang and Shi's trial and conviction;
- 21 • the circumstances related to plaintiffs Wang and Shi's incarceration in China;
- 22 • the circumstances related to the allegations of torture suffered by plaintiffs Wang and
23 Shi;
- 24 • Wang and Shi's activities prior to their arrest and conviction; and
- 25 • other circumstances on which plaintiffs rely for their claims.

26 **C. Discovery Scheduling (Fed. R. Civ. Pro. 26(f)(2)**

27 Plaintiffs' Statement

28 In addition to initial and jurisdictional discovery, Plaintiffs plan to initiate the regular

1 discovery process at the earliest possible date. However, given that the Plaintiffs have not yet
2 received an Answer from Defendants, the Court has not yet decided whether Plaintiffs may
3 proceed with Initial and Jurisdictional Discovery, and a number of the Defendants' preliminary
4 dispositive motions are pending, the parties believe that developing a more detailed discovery
5 plan at this point would be premature. Without the information from initial and jurisdictional
6 discovery that will enable the Plaintiffs to properly respond to the Defendants' pending motions,
7 and without an Answer from the Defendants, Plaintiffs cannot properly anticipate the content of
8 additional discovery or estimate how much time will be needed for discovery.

9 In the Plaintiffs' view, another important reason why specific discovery requests (other
10 than the motion for initial and jurisdictional discovery) have not been made, and why it is
11 premature to seek to develop and initiate a regular discovery plan at this point in the proceedings,
12 is that the Defendants have made clear both to the Plaintiffs in meet and confer discussions, and
13 to the Court in their pleading in opposition to Plaintiffs' Motion to Extend Time for Their
14 Response to the Defendants' Motions to Dismiss and Accompanying Motions, that they are
15 unalterably opposed to the initiation of any discovery process until the "threshold" issues covered
16 by their motions to dismiss and other accompanying motions are resolved by the Court. Given
17 this posture, made clear to us in meet and confer discussions, no discovery is possible without the
18 Court's intervention, and any request for discovery would have been futile.

19 Defendants' Statement

20 While defendants believe that plaintiffs do not need discovery to respond to the pending
21 motions to dismiss, defendants have done nothing to interfere with plaintiffs' ability to propound
22 discovery. It is by plaintiffs' choice alone that they have not initiated any discovery. Defendants
23 expressly informed plaintiffs that they were free to take discovery because no stay had been
24 issued by the Court. *See* September 19, 2007 Declaration of Matthew T. Kline in Support of
25 Defendant Yahoo!, Inc.'s Opposition to Plaintiffs' Motion to Enlarge Time, ¶ 6.

26 Plaintiffs' Motion to Initiate Initial and Jurisdictional Discovery to Respond to
27 Defendants' Motions to Dismiss will be heard on November 1, 2007. Pursuant to the Court's
28 September 20, 2007 Order Enlarging Time for Plaintiffs' Opposition to Defendants' Motions to

1 Dismiss, the hearing date on those motions to dismiss will depend on the Court's ruling on
2 plaintiffs' motion regarding discovery. In light of the pendency of plaintiffs' motion regarding
3 discovery and defendants' motions to dismiss, defendants believe it is premature to establish a
4 full discovery plan. Defendants believe that the development of a discovery plan should await the
5 determination of what discovery will occur prior to the Court's ruling on the motions to dismiss
6 and whether any portion of plaintiffs' claims will survive the ruling on those motions to dismiss.

7 For that reason, defendants do not at this time propose any modifications to the discovery
8 rules, including any changes in the limitations on discovery under the Federal Rules of Civil
9 Procedure, or any additional limitations.

10 **IX. RELATED CASES**

11 The parties are aware of no cases related to this action.

12 **X. RELIEF SOUGHT**

13 Plaintiffs' Statement

14 Plaintiffs seek declaratory and injunctive relief to secure the Defendants' assistance in
15 obtaining the Plaintiffs' release from prison, to prevent the Defendants from similarly harming
16 others in the future, to require the Defendants to identify others similarly harmed, and to provide
17 general, compensatory, and punitive damages for the Plaintiffs' injuries, in an amount to be
18 determined at trial, in order to hold Defendants accountable for their unlawful actions.

19 Defendants' Statement

20 Defendants seek no relief.

21 **XI. SETTLEMENT AND ADR**

22 Plaintiffs' Statement

23 The parties have discussed settlement and ADR, in compliance with Local Rule 3-5, on
24 four separate occasions, but have not reached an agreement on whether ADR, and what form of
25 ADR, is appropriate for this case, although Plaintiffs have indicated support for scheduling a
26 court-sponsored settlement conference as the preferred ADR approach. The parties have not filed
27 a Stipulation and Proposed Order Selecting an ADR Process.

28 On September 7, 2007, the parties notified the Court of need for an ADR phone

1 conference to discuss these matters with ADR staff. That conference was initially scheduled for
2 September 19, 2007, then removed from the calendar, to be scheduled closer to the Case
3 Management Conference. The parties have not yet been notified of the new date for the ADR
4 phone conference.

5 Plaintiffs also presented to the Defendants in writing, and initiated discussions on, a
6 detailed outline of the items to be covered in settlement discussions, and that Plaintiffs feel must
7 be necessary elements of any settlement agreement. The Defendants have indicated that
8 discussions of settlement options would not be suitable or necessary until the Court resolves their
9 motions to dismiss and associated motions.

10 Defendants' Statement

11 Defendants dispute the accuracy of plaintiffs' statements about their interactions.
12 Defendants do not believe there is a prospect for settlement at this time. Defendants have asked
13 that plaintiffs' counsel provide copies of powers of attorney establishing that they have the
14 authority to prosecute the claims asserted in this case. Plaintiffs' counsel have declined to do so.

15 **XII. MAGISTRATE JUDGE**

16 The parties do not consent to having a magistrate judge conduct all further proceedings.

17 **XIII. OTHER REFERENCES**

18 The parties do not believe this case is suitable for reference to binding arbitration, a
19 special master, or the Judicial Panel on Multidistrict Litigation.

20 **XIV. NARROWING OF ISSUES**

21 The parties are not presently in a position to address whether it is feasible or desirable to:
22 (a) narrow the issues in the case by agreement or motion, (b) bifurcate the issues, claims or
23 defenses at trial, or (c) reduce the length of trial by stipulation, use of summaries, or other
24 expedited means of presenting issues.

25 **XV. EXPEDITED SCHEDULE**

26 The parties do not believe this is the type of case that can be handled on an expedited
27 basis with streamlined procedures.

1 **XVI. SCHEDULING**

2 Plaintiffs' Statement

3 Plaintiffs believe the currently scheduled Case Management Conference on November 1,
4 2007 is critical for moving the processing and scheduling of the case forward, and should be used
5 to help resolve pending issues associated with the Plaintiffs' motion for initial and jurisdictional
6 discovery, as well as to help clarify the scheduling of the processing of the Defendant's motions
7 to dismiss and accompanying motions.

8 Plaintiffs cannot estimate at this time how long will be needed for discovery, trial
9 preparation, or trial, without the information that will be presented in the Defendants' Answer and
10 generated through initial and jurisdictional discovery.

11 Defendants' Statement

12 Defendants' pending motions to dismiss, if granted, will result in the dismissal of this case
13 in its entirety or a substantial narrowing of the issues. Until the Court rules on those motions,
14 defendants cannot provide a meaningful proposal for the designation of experts, the discovery
15 cutoff, the hearing of dispositive motions, the pretrial conference and trial. If any portion of this
16 case survives the motions to dismiss, defendants will promptly thereafter submit to the Court their
17 proposal for scheduling the remainder of the action.

18 **XVII. TRIAL**

19 Plaintiffs have requested a jury trial of this action. Until the Court rules on the pending
20 motions to dismiss and other dispositive motions to be filed later, defendants do not know
21 whether plaintiffs' claims should be tried to a jury or the Court. The parties agree that they do not
22 yet have enough information to provide an estimate of the expected length of the trial.

23 **XVIII. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

24 Plaintiffs' Statement

25 Plaintiffs have filed a Certification of Interested Entities or Persons stating that, other than
26 the named parties, there is no such interest to report. Plaintiffs note that additional unnamed and
27 to be identified individuals may be added as plaintiffs, and additional unnamed and to be
28 unidentified individuals and entities may be named as defendants as a result of further

1 investigations and discovery.

2 Defendants' Statement

3 Defendants filed a Certification of Interested Entities or Persons on June 19, 2007, stating
4 that the following entities have either: (i) a financial interest in the subject matter in controversy
5 or in a party to the proceeding; or (ii) any other kind of interest that could be substantially
6 affected by the outcome of the proceeding: (1) Yahoo! Hong Kong Limited (YHKL) and (2)
7 Yahoo! International Subsidiary Holdings Inc. YHKL has since been substituted as a party for
8 the improperly named Yahoo! Holdings (Hong Kong) Ltd. Because Alibaba.com was dismissed
9 as a defendant with the filing of plaintiffs' Second Amended Complaint, the other three entities
10 listed in defendants' Certificate of Interested Entities or Persons (Alibaba.com Corporation,
11 Alibaba.com Limited and Alibaba.com Investment Holding Limited) no longer have an interest in
12 the proceedings.

13
14 Dated: September 28, 2007

MORTON H. SKLAR
WORLD ORGANIZATION FOR HUMAN
RIGHTS USA

15
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23 Dated: September 28, 2007

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