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8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA**
OAKLAND DIVISION

10 WANG XIAONING, YU LING, SHI
 TAO, and ADDITIONAL PRESENTLY
 11 UNNAMED AND TO BE IDENTIFIED
 INDIVIDUALS,

12 Plaintiffs,

13 v.

14 YAHOO! INC., a Delaware Corporation,
 15 YAHOO! HONG KONG, LTD., a Foreign
 Subsidiary of Yahoo!, AND OTHER
 16 PRESENTLY UNNAMED AND TO BE
 IDENTIFIED INDIVIDUAL
 17 EMPLOYEES OF SAID
 CORPORATIONS,
 18

19 Defendants.

Case No. C07-02151 CW

**MOTION FOR ADMINISTRATIVE
 RELIEF RE: NEW AUTHORITY CITED
 IN PLAINTIFFS' REPLY IN SUPPORT OF
 THEIR MOTION FOR INITIAL AND
 JURISDICTIONAL DISCOVERY**

Judge: Hon. Claudia Wilken

Hearing Date: November 1, 2007

Time: 2:00 p.m.

Judge: Hon. Claudia Wilken

20 Pursuant to Civil Local Rule 7-11, defendant Yahoo!, Inc. ("Yahoo!") seeks leave to file
 21 the letter attached as Exhibit A to correct plaintiffs' mischaracterization in their October 18 Reply
 22 of a decision dated October 12, the day after Yahoo! filed its Opposition. That decision,
 23 *Khulumani v. Barclay Nat. Bank Ltd.*, -- F.3d --, 2007 U.S. App. LEXIS 24370 (2d Cir. Oct. 12,
 24 2007), is heavily—but wrongly—relied on by plaintiffs to support their request for discovery. In
 25 fairness, Yahoo! requests a brief opportunity to correct the record, particularly since the Court
 26 previously stated that it may decide plaintiffs' Motion for Initial and Jurisdictional Discovery
 27 without a hearing. Yahoo!'s proposed letter is brief and confined to indicating that the portion of
 28 *Khulumani* relied on by plaintiffs to support their motion actually requires its denial.

C07-02151 CW
 MOT. FOR ADMINISTRATIVE RELIEF RE:
 NEW AUTHORITY

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Dated: October 22, 2007

DANIEL M. PETROCELLI
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By: 
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CC1:772864.2



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October 22, 2007

OUR FILE NUMBER
954120-0057

VIA ELECTRONIC FILING

The Honorable Claudia Wilken
United States District Court
Northern District of California
1301 Clay Street, Suite 400 S
Oakland, CA 94612-5212

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Re: **Wang et. al v. Yahoo! Inc., et al, Case No. C07-02151 CW: (Plaintiffs' Pending Motion to Initiate Initial and Jurisdictional Discovery (filed Sept. 14, 2007))**

Dear Judge Wilken:

Defendant Yahoo!, Inc. writes to clarify a discussion of a new Second Circuit case, *Khulumani v. Barclay Nat. Bank Ltd.*, -- F.3d --, 2007 U.S. App. LEXIS 24370 (2d Cir. Oct. 12, 2007), that appears in plaintiffs' October 18, 2007 Reply To Defendants' Opposition To Plaintiffs' Motion For Initial And Jurisdictional Discovery, and does so because the Court has indicated it might resolve plaintiffs' motion without a hearing. *See* Court's Order Enlarging Time for Plaintiffs' Opp. to Def. Mot. to Dismiss, Pending a Decision on Plaintiffs' Mot. for Initial and Jurisdictional Discovery to Respond to the Mot. to Dismiss, at 1 (Sept. 20, 2007).

In arguing for discovery to oppose defendants' motions to dismiss, plaintiffs contend, the "Second Circuit just confirmed only days ago, factual matters associated with whether the private defendant 'acts together with state officials or with significant state aid' [are] sufficient to satisfy 'aiding and abetting' standards. *Khulumani*, (2d Cir., decided Oct. 12, 2007), at 8." Reply at 11-12. *Khulumani* does not stand for that proposition; instead, it supports Yahoo!'s assertion that only the facts actually pleaded in the complaint are relevant to whether a claim is properly pled. At page 8 of *Khulumani*, the Second Circuit upholds the trial court's Rule 12 dismissal of plaintiffs' Torture Victim Protection Act ("TVPA") claim based on plaintiffs' failure to allege facts sufficient to state a TVPA claim: "For purposes of the TVPA, an individual 'acts under color of law . . . when he acts together with state officials or with significant state aid.' *The Digwamaje Plaintiffs, although twice having amended their complaint, failed to link any defendants to state aid or the conduct of state officials.*" *Khulumani*, 2007 U.S. App. LEXIS 24370 at *8 (emphasis added).

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Consequently, relevant case law interpreting the TVPA does not allow a party to excuse an inability to plead sufficient facts by claiming the need for discovery. Plaintiffs here have had two chances to plead, and because they cannot state facts linking Yahoo! to state officials' acts of torture, no discovery is necessary or permitted.

Very truly yours,



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Specially Appearing Defendant Yahoo! Hong
Kong Limited*

cc: Morton Sklar (Counsel for Plaintiffs)

CC1:772906.1