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17 Attorneys for Plaintiffs
 18 WANG XIAONING, YU LING, SHI TAO

19 UNITED STATES DISTRICT COURT
 20 NORTHERN DISTRICT OF CALIFORNIA
 21 OAKLAND DIVISION

22 WANG XIAONING, YU LING, SHI TAO, and
 23 ADDITIONAL PRESENTLY UNNAMED
 24 AND TO BE IDENTIFIED INDIVIDUALS,

25 Plaintiffs,

26 v.

27 YAHOO! INC., a Delaware Corporation,
 28 YAHOO! HOLDINGS (HONG KONG), LTD.,
 a Foreign Subsidiary of Yahoo!,
 ALIBABA.COM, INC., a Delaware
 Corporation, AND OTHER PRESENTLY
 UNNAMED AND TO BE IDENTIFIED
 INDIVIDUAL EMPLOYEES OF SAID
 CORPORATIONS,

Defendants.

CASE NO. C07-02151 CW

**AMENDED COMPLAINT
 FOR TORT DAMAGES**

JURY TRIAL DEMANDED

1 Plaintiffs, by and through their attorneys, allege upon personal knowledge and belief as to
2 their own circumstances, and upon information and belief (based on the investigation of counsel) as
3 to all other matters, that substantial evidentiary support exists or will exist after a reasonable
4 opportunity for further investigation and discovery as a result of trial proceedings, in support of the
5 following:

6 1. Plaintiffs have been subjected to grave violations of some of the most universally
7 recognized standards of international law, including prohibitions against torture, cruel, inhuman, or
8 other degrading treatment or punishment, arbitrary arrest and prolonged detention, and forced labor,
9 for exercising their right of freedom of speech, association, and assembly, at the hands of Defendants
10 through Chinese officials acting under color of law in the People's Republic of China (referred to
11 herein as "the PRC" or "China").

12 2. To commit these violations of specific, universal, and obligatory standards of
13 international law, Defendants willingly provided Chinese officials with access to private e-mail
14 records, copies of email messages, e-mail addresses, user ID numbers, and other identifying
15 information about the Plaintiffs and the nature and content of their use of electronic
16 communications. This information, available only to the Defendants, was voluntarily provided to
17 Chinese officials by Defendants Yahoo! Inc., its agents, wholly-owned subsidiaries Yahoo! HK and
18 Yahoo! China, and its strategic partner Alibaba.com, Inc., and served as the basis for the acts of
19 persecution and torture that followed as a direct result of the Defendant's activities. By providing
20 this information to the PRC, Defendants knowingly and willfully aided and abetted in the
21 commission of torture and other major abuses violating international law that caused Plaintiffs'
22 severe physical and mental suffering.

23 3. Plaintiffs' claims are actionable under the Alien Tort Statute (ATS), 28 U.S.C. §
24 1350, and the Torture Victim Protection Act (TVPA), 28 U.S.C. § 1350, because their injuries
25 resulted from violations of specific, universal, and obligatory standards of international law as
26 embodied in a number of treaty obligations binding on the United States and implemented
27 domestically here in the United States by a number of statutes including the TVPA.

1 4. Defendants' conduct also violates California state laws, including prohibitions against
2 battery, false imprisonment, assault, intentional infliction of emotional distress, negligence,
3 negligent supervision, and the California Business & Professions Code § 17200.

4 5. Defendants' conduct also breaches United States law under the Electronic
5 Communications Privacy Act by exceeding their authorization to access and control highly private
6 and potentially damaging information concerning Plaintiffs' electronic communication, in violation
7 of 18 U.S.C. § 2701, by unlawfully and knowingly divulging Plaintiffs' electronic communication
8 contents and user information, in violation of 18 U.S.C. § 2702, and by intentionally acquiring
9 and/or intercepting the contents of electronic communications sent by and/or received by Plaintiffs
10 through their use of computers and other electronic devices which were part of, and utilized in,
11 Defendants' electronic communications systems, in violation of 18 U.S.C. § 2511.

12 6. Plaintiffs seek general, compensatory, and punitive damages for their injuries, as well
13 as declaratory and injunctive relief to hold Defendants accountable for their unlawful actions, to
14 secure their assistance in obtaining the Plaintiffs' release from prison, and to prevent them from
15 similarly harming others in the future.

16 JURISDICTION AND VENUE

17 7. This Court has jurisdiction over Plaintiffs' claims under 28 U.S.C. § 1331 (federal
18 question jurisdiction), 28 U.S.C. § 1350 (Alien Tort Statute) and 28 U.S.C. § 1350 (Torture Victim
19 Protection Act). The Alien Tort Statute provides federal jurisdiction for "any civil action by an alien
20 for a tort only, committed in violation of the law of nations or a treaty of the United States." The
21 Torture Victim Protection Act supplements and confirms the ATS by providing federal jurisdiction
22 for acts of torture, as defined by 28 U.S.C. § 1350. The Electronic Communications Privacy Act, 18
23 U.S.C. § 2701 *et seq.*, provides federal jurisdiction for civil claims arising from unauthorized
24 disclosure of electronic communications and customer information.

25 8. This Court also has supplemental jurisdiction over claims arising from violations of
26 state law because, pursuant to 28 U.S.C. § 1367, the facts in the claims arising from state law are so
27 related to the Plaintiffs' claims under federal laws that they form part of the same case or
28 controversy under Article III of the United States Constitution.

INTRADISTRICT ASSIGNMENT

1
2 9. Assignment and venue in the San Francisco/Oakland Division is proper pursuant to
3 Local Rule 3-2(c) and (d) because Defendants Yahoo! Inc. and Alibaba.com, Corp. are located in, do
4 business in, and/or have major business contacts with this district and division.

PARTIES*Plaintiffs*

5
6
7 10. Plaintiff **Wang Xiaoning** is a subject, citizen, and resident of the People's Republic
8 of China. He sues on behalf of himself for the injuries, including pain and suffering, he has endured
9 as a result of his torture, cruel, inhuman, or other degrading treatment, and arbitrary arrest and
10 prolonged detention inflicted upon him as a result of the Defendants' actions aiding and abetting
11 Chinese government officials in committing these major human rights abuses. Specifically, Wang
12 Xiaoning was arrested and unlawfully and arbitrarily detained and prosecuted for publishing and
13 circulating through the Internet electronic journals and articles that supported democratic reform in
14 China and for communicating with other democracy advocates. He also sues for compensation for
15 property seized by government officials in conjunction with his arbitrary arrest and prolonged
16 detention. He is serving a ten-year sentence at Beijing Municipal No. 2 Prison, a forced labor prison
17 for political prisoners, under severe conditions of prolonged confinement that are highly abusive in
18 nature.

19 11. Plaintiff **Yu Ling** is a subject, citizen, and resident of the People's Republic of China,
20 and is the wife of 27 years of Plaintiff Wang Xiaoning. She sues on behalf of herself for the injuries,
21 including pain and suffering, she has endured as a result of her husband's torture, cruel, inhuman, or
22 other degrading treatment, and arbitrary arrest and prolonged detention inflicted upon him as a result
23 of the Defendants' actions aiding and abetting Chinese government officials in committing these
24 major human rights abuses. Specifically, subsequent to her husband's unlawful and arbitrary
25 detention, Yu Ling has suffered extreme emotional distress and financial hardship. She also sues for
26 compensation for property seized by government officials in conjunction with her husband's
27 arbitrary arrest and prolonged detention.
28

1 California, in Santa Clara County. Yahoo! Inc. operates a business concerned primarily with
2 electronic communication and information. The company's major activities include supplying
3 Internet service, web-based personal e-mail accounts, news portals, and a search engine, all designed
4 to facilitate electronic communication and sharing of information. By the nature of its activities,
5 Yahoo! has access to and maintains identifying information about individuals using its electronic
6 services.

7 15. Defendant **Yahoo! Holdings (Hong Kong), Ltd.** (Yahoo! HK), is a wholly owned
8 subsidiary of Yahoo! Inc. based in Hong Kong. Yahoo! HK was the business entity, partner, and/or
9 agent of Yahoo! Inc. responsible for operating and managing Yahoo! China until Yahoo! Inc.
10 formed a strategic partnership with Defendant Alibaba.com, Corp. in October 2005.

11 16. Defendant **Alibaba.com, Inc.** (Alibaba) is a Chinese company engaged in electronic
12 commerce and communications, operating the world's largest online marketplaces for both
13 international and Chinese trade. Alibaba is, upon information and belief, incorporated in Delaware
14 and the Grand Cayman Islands, and conducts its US business from its offices in Santa Clara and
15 Newark, California.

16 17. Yahoo! Inc. has conducted business in China under the name Yahoo! China since
17 1999. Yahoo! Inc. has conducted business in China directly, through its wholly-owned subsidiary
18 Yahoo! HK, and, since 2005, primarily through its strategic partner, Alibaba.

19 18. Defendant Yahoo! Inc. formed a strategic, exclusive partnership with Defendant
20 Alibaba in October 2005. Under this partnership agreement, Yahoo! Inc. acquired a 40% share in
21 Alibaba with 35% voting rights in exchange for \$1 billion in cash. Also, Yahoo! Inc. merged the
22 operations of Yahoo! China into Alibaba, giving Alibaba the exclusive right to use the Yahoo! brand
23 in China. The two companies continue to work in an exclusive partnership to carry out and expand
24 electronic services operations in China.

25 19. The additional, presently unknown Defendants listed in the caption heading of this
26 case are presently unnamed and to be identified employees of the Defendant companies, and/or other
27 persons whose individual actions contributed to or aided and abetted the violations of international
28 law suffered by Plaintiffs as set out in this complaint. Identifying information about them and the

1 role they played in the abuses are expected to be identified and described in greater detail during
2 these proceedings.

3 STATEMENT OF FACTS

4 *General Facts*

5 20. Journalists, human rights activists, and other Internet users in China have been
6 subjected to a pattern of arbitrary criminal prosecution, imprisonment, and torture as a result of their
7 expression of ideas in opposition to the positions or policies of the government of the PRC on a
8 variety of politically disfavored topics, such as the Tiananmen Square massacre, democratic reform,
9 human rights advocacy, or disagreement with government policies generally. As a result of the
10 expression of their views, these “dissidents” are subjected to arbitrary arrest, criminal prosecution,
11 and persecution in violation of numerous protections for fundamental rights of freedom of
12 expression, association, and assembly under the Chinese Constitution and international law.

13 21. Since the arrival of electronic communications and the Internet in China, official
14 controls have been imposed to monitor and censor electronic communications on a widespread basis,
15 in order to keep track of the access and use of Internet information sources, including expression
16 related to certain political topics, such as democracy support and human rights. As a result,
17 “dissident” journalists, human rights activists, and other Internet users’ personal communications
18 and activities are carefully censored and monitored.

19 22. Once these “dissidents” are identified and targeted through the Internet monitoring
20 and censorship program, they face a well documented pattern of systematic arbitrary arrest and
21 prolonged detention, incommunicado detention, extrajudicial killings, torture, cruel, inhuman or
22 degrading treatment and punishment, and forced labor. Sometimes, these abuses lead to death in
23 custody. Despite Chinese laws prohibiting these violations of both domestic law and international
24 human rights standards, authorities carry out these abuses under color of law within a culture of
25 impunity.

26 23. In or around the Spring of 2002, Yahoo! Inc. signed an official, voluntary agreement
27 that had the effect of directly involving Yahoo! in the censoring and monitoring of on-line content
28 and communication by its Chinese users. This agreement was in the form of the Internet Society of

1 China's "Public Pledge on Self-Discipline for the Chinese Internet Industry" (referred to herein as
2 "the Public Pledge"). The Internet Society of China is a government-affiliated professional
3 organization, and the Public Pledge is described as being voluntary, not required by government
4 regulation, although pressures to sign the Pledge and to abide by its requirements as a prerequisite
5 for doing business in China are considerable. By signing the Public Pledge, Yahoo! Inc. voluntarily
6 agreed to help monitor and censor electronic communication use involving information that,
7 according to the Internet Society of China, could "jeopardize state security" or "disrupt social
8 stability," and to report any offending on-line expression or communication to PRC authorities.

9 24. A number of human rights organizations responded to news of the Defendants signing
10 this pledge by alerting Defendants that by helping the censors, and by identifying people who could
11 be accused of anti-government speech or communication, the Defendants would be placing many
12 innocent individuals, who were merely expressing their views or communicating with others, at risk
13 of arbitrary arrest, prolonged arbitrary detention, forced labor, and torture as a result of their lawful
14 exercise of free speech and free association rights. For example, on July 30, 2002, Human Rights
15 Watch sent a letter to Yahoo! Inc. Chairman and Chief Executive Officer Terry Semel, expressing
16 concern that Yahoo! Inc. signed the Public Pledge, and alerting Yahoo! Inc. of the dangers to
17 Internet users associated with their company's cooperation with monitoring and censoring efforts.
18 This letter notified Yahoo! Inc. that it was common in China for people to be arbitrarily arrested for
19 expressing disfavored views. The letter pointed out that "In China ... any public expression of
20 views that differ from those of the state, and provision of information not deemed politically
21 acceptable, may be considered 'harmful' and may result in a prison sentence," mistreatment, torture,
22 and execution. The letter also stated that, by upholding the Public Pledge, Defendants would risk
23 assisting such human rights violations, clearly pointing out that "there is a strong likelihood that
24 Yahoo will assist in furthering such human rights violations" through support of these monitoring
25 and censorship activities. The letter urged Yahoo! Inc. to withdraw from the Public Pledge and to
26 state its support for internationally recognized standards of free expression. Human Rights Watch
27 also sent copies of this letter to Jerry Yang, Co-Founder and Director of Yahoo! Inc., Chris Castro,
28 Chief Communications Officer and Senior Vice President of Yahoo! Inc., John Costello, Chief

1 Global Marketing Officer of Yahoo! Inc., and Jon Sobel, Vice President, General Counsel, and
2 Secretary of Yahoo! Inc.

3 25. A subsequent 2002 Amnesty International report also provided Defendants notice that
4 the Defendants' involvement in the monitoring and censorship program presented a grave risk to
5 Internet users, and subjected them to arbitrary detention and torture. On November 26, 2002,
6 Amnesty International published "State Control of the Internet in China," documenting Chinese
7 officials' use of electronic evidence to prosecute Chinese democracy advocates for exercising their
8 freedom of expression over the Internet. This report, as well as the numerous press releases and news
9 articles publicizing it, noted that Yahoo! Inc. had signed the Public Pledge and pointed out that
10 compliance with the pledge could lead to violations of international human rights norms.
11 Furthermore, the report documented that 21 prisoners in China had already suffered arbitrary arrest
12 and prolonged arbitrary detention, torture, and death in custody as punishment for the "crime" of
13 using the Internet to exercise their right to freedom of expression, and to communicate and obtain
14 information concerning human rights or democracy.

15 26. Particularly in light of these notifications, along with general and well-publicized
16 documentation of Chinese human rights abuses, including those in the U.S. Department of State
17 Reports on human rights abuses in China, Defendants had every reason to know and understand that
18 the electronic communication user information they provided to authorities could well be used to
19 assist in the infliction of such abuses as arbitrary arrest, torture, cruel, inhuman, or other degrading
20 treatment, and prolonged detention and/or forced labor, to punish what might be viewed by
21 authorities as pro-democracy or human rights activities.

22 27. Despite this knowledge and understanding, Defendants turned over specific
23 identifying information about the Plaintiffs and their electronic communications to officials who
24 used this information as a basis for arbitrarily arresting, detaining, and torturing the Plaintiffs.

25 28. While in custody, Plaintiffs were subjected to torture, cruel, inhuman or degrading
26 treatment, forced labor, and arbitrary, prolonged and indefinite detention, for expressing their free
27 speech rights and for using the Internet to communicate about democracy and human rights matters.
28

1 29. Defendants greatly benefited from these violations of the Plaintiffs’ fundamental
2 human rights through their continued and expanded conduct of business in the PRC, the second-
3 largest Internet market in the world with at least 110 million users. Defendants provided identifying
4 information about the Plaintiffs, in violation of the privacy agreements and assurances made to the
5 Defendants’ customers and users, that led to their arbitrary arrest, indefinite detention and torture, in
6 order to obtain the approval and support of PRC officials and their agreement to allow them to
7 continue conducting and expanding the Defendants’ business interests in the PRC.

8 ***Specific Facts***

9 Wang Xiaoning

10 30. From 2000 to 2001, Wang Xiaoning edited *Free Forum of Political Reform*, and from
11 2001 to 2002, he edited *Commentaries on Current Political Affairs*, electronic journals containing
12 articles written by Wang and others calling for democratic reform and a multi-party system in China.

13 31. During this same time period, Wang posted additional pro-democracy articles on
14 websites in China and abroad. From 2000 to 2001, Wang Xiaoning published his journals and
15 articles on an e-mail subscriber list, “aaabbbccc” Yahoo! Group.

16 32. In 2001, administrators noticed the political content of Wang’s writings and blocked
17 him from sending messages to the “aaabbbccc” Yahoo! Group.

18 33. With this means of dissemination blocked to him, Wang Xiaoning continued to
19 publish his writings by electronically sending his journal on an anonymous basis to individual e-mail
20 addresses until he was arbitrarily detained in 2002.

21 34. Yahoo! HK provided identifying information to police, linking Wang Xiaoning to his
22 anonymous e-mails and other pro-democracy Internet communications.

23 35. On September 1, 2002, approximately ten security police raided Wang Xiaoning’s
24 home and arbitrarily detained Wang Xiaoning without informing him or his family of the charges
25 against him. On the same day, police searched his home and seized two computers, personal
26 computer files, e-mail records, written notes, address books, and manuscripts.

27 36. Wang was not formally arrested and charged until almost a month later, on September
28 30, 2002.

1 37. From September 1, 2002 to May 2004, Wang was held at the Detention Center of
2 Beijing State Security Bureau, where he suffered severe abuse at the hands of the prison officials.
3 The officials kicked and beat Wang repeatedly to force him to confess to having engaged in “anti-
4 state” activities and to turn over the names of other persons with whom he had communicated.
5 Prison guards commanded and instructed other prisoners to use psychological tactics against Wang
6 to break his resolve so that he would confess, and also as punishment for his writings. During the
7 more than twenty months that he was arbitrarily detained at the Detention Center, Wang was often
8 barred from going outside. These abuses had severe physical and psychological effects on Wang.
9 When his wife was finally able to see him approximately six months after his arbitrary and unlawful
10 detention, Wang was very weak, showed no emotional expression, and exhibited severe respiratory
11 difficulties.

12 38. On July 25, 2003, the Beijing Municipal First Intermediary People’s Court tried
13 Wang Xiaoning on charges of “incitement to subvert state power,” advocating the establishment of
14 an alternative political party, and communicating with an overseas organization the Chinese
15 government considers “hostile.”

16 39. On September 12, 2003, after almost fourteen months of arbitrary detention, the court
17 sentenced Wang to ten years in prison and two additional years of deprivation of political rights.

18 40. The court specifically relied on evidence supplied by Defendants to identify and
19 convict Wang Xiaoning. The judgment noted that Yahoo! HK informed investigators that a
20 mainland China-based e-mail account (bxoguh@yahoo.com.cn) was used to set up Wang Xiaoning’s
21 “aaabbbccc” Yahoo! Group, and that the e-mail address ahgq@yahoo.com.cn, which Wang
22 Xiaoning used to post e-mails to that Yahoo! Group, was also a mainland China-based account
23 maintained by Wang Xiaoning. Defendants were cited in the court decision as instrumental in
24 causing the Plaintiff’s arrest and criminal prosecution.

25 41. Additional evidence cited by the judgment included the following pro-democracy,
26 non-violent statements attributed to Wang Xiaoning as having appeared in his electronic
27 communications:
28

1 “Without the multi-party system, free elections and separation of powers, all types of
2 political reform will come to nothing.”

3
4 “We should never forget that China is still a totalitarian and despotic country.”

5
6 “The Four Basic Principles [of Chinese Communist government] are the biggest
7 obstacle to the establishment of the democratic system [in China].”

8
9 “In today’s China, the workers and peasants are pressed under the lowest level of
10 society. Thousands upon thousands of workers lost their job and many peasant
11 workers are bitterly oppressed and exploited. However, they have no right to go on
12 strike, no freedom to organized their own union and cannot find anything by which to
13 secure their basic rights.”

14
15 “The main reason that the Chinese Communist Party has been able to retain power in
16 spite of being so corrupt is that China does not yet have a party that can replace the
17 Communist Party.”

18
19 42. In May 2004, authorities transferred Wang to the Beijing Prison No. 2. Upon his
20 transfer, authorities warned Wang Xiaoning that if he appealed the judgment against him, he would
21 be denied any opportunity for parole, reduction of sentence for good behavior, or other privileges.
22 Despite these warnings, Wang Xiaoning filed his appeal with the Supreme People’s Court, citing
23 that his arrest and conviction for free expression of his opinions was illegal under Chinese and
24 international law. Rejecting these arguments, the court denied his appeal on December 22, 2004.
25 Through his wife, Yu Ling, Wang Xiaoning appealed his case again, but the courts rejected his
26 application for appeal on July 1, 2006.

27 43. Wang Xiaoning has continued to suffer severe physical, psychological, and emotional
28 abuse as a result of the court’s decision that his writings and beliefs were subversive. Beijing

1 Municipal No. 2 Prison, where Wang is unlawfully incarcerated, is a secretive, high-security forced
2 labor prison where serious and “special control” prisoners are held, particularly political prisoners.
3 Wang has been subjected to a severe form of treatment in this prison. He is held in a cell with nine
4 other inmates and subjected to malnourishment. The prison guards deny Wang any access to
5 recreation or even sunlight for weeks and even months at a time, even though the standard at the
6 prison is to allow prisoners outside once a day. Prison officials refused to allow Wang to see his
7 mother before her death in September 2005. Wang’s access to family members is strictly limited,
8 with his wife allowed to see him at most for only one half hour per month. Prison officials scrutinize
9 all written correspondence to and from Wang, severely limiting his ability to communicate with
10 anyone outside the prison, including his wife.

11 Yu Ling

12 44. Yu Ling and her family have endured severe psychological and emotional suffering
13 as a direct result of the arbitrary detention of her husband on September 1, 2002. She and her family
14 have suffered from the loss of Wang’s presence and the lack of information about his location, the
15 charges against him, his treatment, and his well-being.

16 45. Yu Ling was present on September 1, 2002, when security police raided the house she
17 shared with her husband, Wang Xiaoning. Some of the property that security police seized that day
18 – including one of the computers – was Yu Ling’s property.

19 46. Since Wang Xiaoning was illegally detained, Yu Ling has been subjected to
20 continued police surveillance, which caused her to fear for her own safety and personal security.
21 She feared that the police would arbitrarily arrest her and subject her to physical abuse like her
22 husband. These fears were reinforced by the actions of her family and friends, who no longer
23 contacted her out of their own fears for their personal safety and respectability, and also because the
24 police required people coming to visit her to register their names. Because of the surveillance and
25 out of sincere concern for herself and her family, friends, and neighbors, Yu Ling isolated herself
26 and took extra care not to raise the suspicions of the officials toward her or her family and friends.
27 Yu Ling has suffered from extreme depression and guilt over these events.

1 47. The arbitrary detention of her husband Wang Xiaoning placed Yu Ling in an
2 extremely embarrassing position with her family. Due to the implications of his arrest, the danger it
3 could cause to her family, and the heightened importance of status in China, Yu Ling kept the truth
4 of Wang's arbitrary detention from her immediate family. At her mother's funeral, Yu Ling's
5 siblings confronted her and accused her husband of being a bad man for not attending the funeral. In
6 the midst of her extreme grief over the passing of her mother, Yu Ling had to tell her brothers and
7 sisters the truth that her husband Wang could not attend because he was in prison.

8 48. These psychological and emotional injuries have caused Yu Ling physical injury.
9 She cannot eat or sleep due to the emotional distress caused by her husband's absence, has lost a
10 substantial amount of weight, and is consumed by her efforts to assist her husband.

11 49. Since the arbitrary detention of her husband Wang Xiaoning on September 1, 2002,
12 Yu Ling has had to devote many hours to her husband's defense. This has taken her away from
13 work, resulting in lost income. She has also had to pay several attorneys a substantial amount of
14 money to defend her husband. Yu and her family have also suffered financially from the loss of
15 Wang Xiaoning's income. Her son has attempted to replace his father's lost salary but a company
16 that offered him work terminated the contract when it learned of Wang Xiaoning's conviction.

17 Shi Tao

18 50. From February 2002 to May 2004, Shi Tao worked as a reporter and head of the
19 Editorial Department for *Contemporary Business News (Dangdai Shangbao)* in Changsha, Hunan
20 Province, China. From May 2004 until his arbitrary arrest and prolonged arbitrary detention on
21 November 23, 2004, Shi Tao worked as a freelance journalist, in Taiyuan, Shanxi Province, China.

22 51. As a reporter, Shi Tao wrote about corruption by government officials in China. As a
23 freelance writer, he published numerous political commentaries calling for democratic reform of the
24 Chinese government, as well as several books of poetry.

25 52. In April 2004, Shi Tao published an essay, "The Most Disgusting Day," that criticized
26 the Chinese government for detaining an activist member of the Tiananmen Mothers, an
27 organization of mothers whose children were killed by the Chinese government in its 1989
28

1 crackdown on the internal democracy movement and demonstrators in Tiananmen Square. Tao
2 published the essay under a pseudonym on an Internet forum.

3 53. On April 20, 2004, at a staff meeting at the offices of the publication *Contemporary*
4 *Business News*, Shi Tao was advised of a document sent by the CCP's Central Propaganda Bureau,
5 alerting journalists to the security concerns and government preparations in anticipation of the
6 upcoming 15th anniversary of the 1989 Tiananmen Square massacre. Later that night, Shi Tao sent
7 his notes from this staff meeting, under an alias, to the New York-based Web site *Democracy Forum*
8 (*Minzhu Tongxun*), using his personal Yahoo! e-mail account.

9 54. Between April 20, 2004 and November 23, 2004, Yahoo! HK gave Chinese officials
10 and investigators information linking Shi Tao to the anonymous email he sent to Democracy Forum,
11 including the account holder information for the email address, the IP address and physical address
12 of the computer from which the email was sent, and the date and time the email was sent and its
13 contents. Defendants also supplied to the prosecuting officials the physical address of the office
14 where the offending electronic communication took place, thereby linking the anonymous email
15 message to Shi Tao.

16 55. On November 23, 2004, Shi Tao was detained mid-day in a street near his home in
17 Taiyuan, Shanxi Province. As he was walking on the street, several people suddenly accosted and
18 kidnapped him, placed a hood over his head and transported him thousands of miles away to
19 Changsha, Hunan Province. His house was subsequently searched and police seized his computer,
20 papers, and other property without a warrant.

21 56. After 21 days of detention, Shi Tao was formally arrested and charged on December
22 14, 2004, but the charges were not made public.

23 57. Up to and during his trial, Shi Tao was held at Changsha Detention Center, where
24 officials are known to physically abuse and torture detainees on a regular basis. Survivors of the
25 prison describe being handcuffed and shackled for weeks at a time and chained to a door plank.
26 Officials typically prohibit visits from family members as they believe isolation contributes to a
27 more rapid reeducation of the detainee and a repudiation of their "unlawful" conduct.
28

1 58. On February 24, 2005, Chinese authorities revoked the credentials of Shi Tao's
2 defense attorney for representing activists accused of "adopting positions and making statements
3 contrary to the law and the Constitution" and "defiling and slandering the Communist Party and
4 government." On March 4, 2005, seven days before Shi Tao's trial, authorities placed his defense
5 attorney under house arrest, presumably for the "crime" of properly defending his client.

6 59. On March 11, 2005, the Changsha Municipal Intermediate People's Court in Hunan
7 Province tried Shi Tao in a closed hearing. To no one's surprise, given what had happened to his
8 prior attorney, Shi Tao's court-appointed replacement attorney entered a guilty plea on Shi Tao's
9 behalf.

10 60. On April 30, 2005, the court sentenced Shi Tao to ten years imprisonment for
11 "illegally providing state secrets overseas." In its verdict, the court specifically made reference to
12 and cited the Internet user information that Defendants had supplied to Chinese officials as evidence
13 against Shi Tao:

14 "Account holder information furnished by Yahoo! Holdings (Hong Kong) Ltd., which
15 confirms that for IP address 218.76.8.201 at 11:32:17 p.m. on April 20, 2004, the
16 corresponding user information was as follows: user telephone number 0731-4376362
17 located at the Contemporary Business News office in Hunan."

18 61. On May 4, 2005, Shi Tao appealed the judgment to the Hunan Province High
19 People's Court on the ground that because the police used items seized without a warrant, the
20 evidence against him was illegal, and that because the information he provided to *Democracy Forum*
21 was a reflection of public sentiment, he could not be accused of revealing a state secret. At the
22 appellate court's hearing, the court refused to hear the arguments presented by Shi Tao's legal
23 defense, failed to respond to the evidence presented by the defense, and closed the hearing to the
24 public despite Chinese Criminal Procedure Law provisions that appeal hearings, even for state
25 secrets cases, should be open to the public unless there are enumerated exceptional circumstances.
26 The court denied Shi Tao's appeal on June 2, 2005.

27 62. On March 30, 2006, Shi Tao, through his legal representative, filed a formal
28 complaint with the Hong Kong Privacy Commissioner, requesting an investigation of the

1 Defendants' actions divulging Shi Tao's private information. The Privacy Commissioner accepted
2 the complaint and conducted an investigation. The Privacy Commissioner's report, made public on
3 March 14, 2007, concluded that because Hong Kong's privacy ordinance only regulates the actions
4 of companies in Hong Kong and in Shi Tao's case the information was disclosed in China to
5 Chinese officials, his office did not have jurisdiction over the incident.

6 63. Since his appeal was denied in June 2005, Shi Tao has been incarcerated at Chishan
7 Prison of Hunan Province, Area 6, a high-security prison known for holding political prisoners and
8 violent criminals serving long sentences. Shi Tao shares a cell with more than ten other inmates.
9 His health and mental state have deteriorated sharply in the prison. He suffers from an ulcer and a
10 heart ailment, as well as skin lesions induced by the prison's damp conditions. He has very little
11 contact with people outside the prison. The prison officials monitor his written communications.

12 64. Chishan Prison uses a severe system of forced labor, in which prisoners work in dark,
13 dust-filled factories, starting before dawn and working for sixteen hours or more, in conditions
14 intended to destroy their physical and mental capacities. Shi Tao has served as a forced laborer in
15 these workshops. Detainees in this prison rarely see daylight. Former prisoners have reported that
16 inmates are denied sleep and forced to labor for long hours under bright lights, which harm their
17 vision and in some cases cause blindness and other disabilities. Prisoners convicted of violent crimes
18 are placed in charge of the workshops to intimidate their fellow inmates. They are encouraged to
19 target their attention and abuse on the political prisoners. Guards in Chishan Prison also abuse and
20 torture the political prisoners with constant violence and intimidation. Survivors of the prison have
21 described the systemic use of torture and other cruel, inhuman or degrading treatment or punishment
22 by prison guards. Prisoners also are denied necessary medical care, a particularly important
23 consideration for Shi Tao considering his ulcer, heart ailment, and skin lesions.

24 65. In addition to his physical and psychological injuries, Shi Tao has suffered extreme
25 emotional distress. He has even lost his family, since his wife divorced him in 2006.

26 66. In October 2005, the Committee to Protect Journalists named Shi Tao one of three
27 annual recipients of its International Press Freedom Award. Amnesty International has declared Shi
28 Tao a prisoner of conscience as he was imprisoned solely for peacefully exercising his right to

1 freedom of expression and opinion. The United States Department of State Country Report on
2 Human Rights Practices in China for 2006, published March 6, 2007, names Shi Tao as a political
3 prisoner, imprisoned for exercising the right to free expression.

4 **CAUSES OF ACTION**

5 67. Plaintiffs' causes of action arise under and violate the following laws, agreements,
6 conventions, resolutions, and treaties:

- 7 (a) Alien Tort Statute, 28 U.S.C. § 1350;
- 8 (b) Torture Victim Protection Act, 28 U.S.C. § 1350;
- 9 (c) Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or
10 Punishment G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc.
11 A/39/51 (1984), *entered into force* June 26, 1987;
- 12 (d) International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N.
13 GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered*
14 *into force* Mar. 23, 1976;
- 15 (e) Universal Declaration of Human Rights (1948) G.A. res. 217A (III), U.N. Doc A/810
16 at 71;
- 17 (f) Charter of the United Nations (1945), **adopted** June 26, 1945, 59 Stat. 1031, T.S.
18 993, 3 Bevans 1153 (*entered into force* October 24, 1945);
- 19 (f) International Labor Organization Convention No. 29 Concerning Forced or
20 Compulsory Labor (1930), *adopted* June 28, 1930, 39 U.N.T.S. 55 (*entered into force*
21 May 1, 1932).
- 22 (g) The Electronic Communications Privacy Act, 18 U.S.C. § 2701, § 2702, and §2511;
23 and
- 24 (h) Statutes and common law of the State of California, including but not limited to
25 assault and battery, false imprisonment, negligence, intentional infliction of emotional
26 distress, negligent infliction of emotional distress, and unfair business practices.
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FIRST CLAIM FOR RELIEF

**(Torture, a Violation of International Law for Which the Alien Tort Statute
and the Torture Victim Protection Act Provide Relief)**

(By Wang Xiaoning and Shi Tao Against All Defendants)

68. Plaintiffs re-allege and incorporate by reference the facts and allegations set forth in paragraphs 1 through 66 of this Complaint as if fully set forth herein in this First Claim for Relief.

69. The Defendants' acts described in this Complaint caused direct and severe physical and mental pain and suffering to the Plaintiffs and placed them at severe risk of personal injury and/or death in connection with their participation in, and support of, the peaceful exercise of their rights of free speech and communication, free association, and the right to hold, exercise and express their political beliefs.

70. Because Defendants' acts described herein violated multiple provisions prohibiting torture on an absolute basis including: (1) treaties binding on the United States, (2) statutes adopted by the Congress of the United States implementing those treaty obligations, (3) international and domestic judicial decisions applying and interpreting the prohibition against cruel, inhuman, or degrading treatment or punishment, (4) administrative regulations and international and domestic judicial decisions applying and interpreting the prohibition against torture, and (5) a number of specific, universal, and obligatory standards that are recognized to be part of customary international law, these acts constitute "tort[s] ... committed in violation of the law of nations or a treaty of the United States" under the Alien Tort Statute (ATS), 28 U.S.C. § 1350.

71. These acts also specifically constitute torture in violation of the Torture Victim Protection Act (TVPA), 28 U.S.C. § 1350.

72. Defendants aided and abetted and/or ratified these acts of torture in violation of international, federal, and state law. These violations and actions meet the definition of torture under the meaning of the TVPA, the ATS, and international treaties and U.S. laws and regulations, as well as customary international law, which condemn torture on an absolute basis, irrespective of the reasons why the abuses are inflicted.

1 73. The Plaintiffs are therefore entitled on this basis to compensatory and punitive
2 damages, in amounts to be established at trial, and to such other declaratory and/or injunctive relief
3 as may be deemed appropriate.

4 ***SECOND CLAIM FOR RELIEF***

5 **(Cruel, Inhuman or Degrading Punishment or Treatment or Punishment, Violations of**
6 **International Law for Which the Alien Tort Statute Provides Relief)**

7 **(By Wang Xiaoning and Shi Tao Against All Defendants)**

8 74. Plaintiffs re-allege and incorporate by reference the facts and allegations set forth in
9 paragraphs 1 through 66 of this Complaint as if fully set forth herein in this Second Claim for Relief.

10 75. These acts of cruel, inhuman, or degrading treatment or punishment suffered by the
11 Plaintiffs designated in this Second Claim for Relief, including physical injury and the severe
12 physical and mental suffering associated therewith, were inflicted upon them by the joint and
13 collusive actions of the Defendants and PRC government officials acting under color of law, through
14 unlawful or unauthorized actions prohibited by international law.

15 76. These acts had the intent and the effect of grossly humiliating, debasing, intimidating,
16 and punishing the Plaintiffs, forcing them to act against their will and conscience, inciting fear and
17 anguish, and seeking to break their physical and/or moral resistance.

18 77. These acts of cruel, inhuman, or degrading treatment or punishment were inflicted on
19 the Plaintiffs for purposes that include, among others, preventing them from exercising their free
20 speech and free association rights, and punishing them for exercising their right to have and
21 communicate political beliefs.

22 78. Because the acts described herein violated the prohibitions against cruel, inhuman, or
23 degrading punishment or treatment including: (1) treaties binding on the United States, (2) statutes
24 adopted by the Congress of the United States implementing those treaty obligations, (3) international
25 and domestic judicial decisions applying and interpreting the prohibition against cruel, inhuman, or
26 degrading treatment or punishment, (4) administrative regulations and international and domestic
27 judicial decisions applying and interpreting the prohibition against cruel, inhuman or degrading
28 treatment or punishment, and (5) a number of specific, universal, and obligatory standards that are

1 recognized to be part of customary international law, these acts constitute “tort[s] ... committed in
2 violation of the law of nations or a treaty of the United States” under the Alien Tort Statute, 28
3 U.S.C. § 1350.

4 79. Defendants knowingly aided and abetted and/or ratified these abuses, and did not act
5 to prevent or punish these violations of human rights as embodied in international law.

6 80. Defendants are liable for aiding and abetting and/or ratification of the commission of
7 these abuses under this cause of action.

8 81. The Plaintiffs are therefore entitled on this basis to compensatory and punitive
9 damages in amounts to be established at trial, and to such other declaratory and/or injunctive relief
10 as may be deemed appropriate.

11 ***THIRD CLAIM FOR RELIEF***

12 **(Arbitrary Arrest and Prolonged Detention, a Violation of International Law for Which the
13 Alien Tort Statute and the Torture Victim Protection Act Provide Relief)**

14 **(By Wang Xiaoning and Shi Tao Against All Defendants)**

15 82. Plaintiffs re-allege and incorporate by reference the facts and allegations set forth in
16 paragraphs 1 through 66 of this Complaint as if fully set forth herein in this Third Claim for Relief.

17 83. These acts of arbitrary arrest and long-term detention suffered by the Plaintiffs
18 designated in this Third Claim for Relief, including arrest and detention for an unlawful purpose in
19 violation of the rights to freedom of speech, association, and assembly, were inflicted upon them by
20 the joint and collusive actions of the Defendants and government officials acting under color of law,
21 albeit through unlawful or unauthorized actions and for unlawful and unauthorized purposes.

22 84. These acts caused direct physical and mental pain and suffering upon the Plaintiffs,
23 caused loss of liberty and property, and placed them at severe risk of personal injury in connection
24 with their participation in, and support of, the peaceful exercise of their rights of free speech and free
25 association, and their rights to hold, exercise and express their political beliefs.

26 85. Because the acts described herein violated provisions prohibiting arbitrary arrest and
27 prolonged detention including: (1) treaties binding on the United States, (2) statutes adopted by the
28 Congress of the United States implementing those treaty obligations, (3) international and domestic

1 judicial decisions applying and interpreting the prohibition against arbitrary arrest and prolonged
2 detention, (4) administrative regulations and international and domestic judicial decisions applying
3 and interpreting the prohibition against arbitrary arrest and prolonged detention, and (5) a number of
4 specific, universal, and obligatory standards that are recognized to be part of customary international
5 law, these acts constitute “tort[s] ... committed in violation of the law of nations or a treaty of the
6 United States” under the Alien Tort Statute, 28 U.S.C. § 1350.

7 86. Defendants aided and abetted in the carrying out of these abuses, and did not act to
8 prevent or punish these violations of human rights as embodied in international and domestic law.

9 87. Defendants are liable for aiding and abetting and/or ratifying these abuses, as
10 specified in this cause of action.

11 88. The Plaintiffs are therefore entitled on this basis to compensatory and punitive
12 damages, in amounts to be established at trial, and to such other declaratory and/or injunctive relief
13 as may be deemed appropriate.

14 ***FOURTH CLAIM FOR RELIEF***

15 **(Forced Labor, a Violation of International Law for Which the Alien Tort Claims Act
16 and the Torture Victims Protection Act Provide Relief)**

17 **(By Shi Tao Against All Defendants)**

18 89. Plaintiffs re-allege and incorporate by reference the facts and allegations set forth in
19 paragraphs 1 through 47 of this Complaint as if fully set forth herein in this Fourth Claim for Relief.

20 90. The Plaintiffs were placed in fear for their lives, were deprived of their freedom, and
21 were forced to suffer severe physical and mental abuse associated with forcing them into working in
22 the prison factories in inhumane conditions, by the joint and collusive actions of the Defendants and
23 government officials acting under color of law, through unlawful or unauthorized actions.

24 91. Because the acts described herein violated provisions prohibiting forced labor
25 including: (1) treaties binding on the United States, (2) international and domestic judicial decisions
26 applying and interpreting the prohibition against forced labor, and (3) administrative regulations and
27 international and domestic judicial decisions applying and interpreting the prohibition against forced
28 labor, and (4) a number of specific, universal, and obligatory standards that are recognized to be part

1 of customary international law, these acts constitute “tort[s] ... committed in violation of the law of
2 nations or a treaty of the United States” under the Alien Tort Claims Act, 28 U.S.C. § 1350.

3 92. Defendants aided and abetted in the carrying out of these abuses, and did not act to
4 prevent or punish these violations of human rights as embodied in international and domestic law.

5 93. Defendants are liable for aiding and abetting and/or ratifying this cause of action.

6 94. The Plaintiffs are therefore entitled on this basis to compensatory and punitive
7 damages to be established at trial, and to such other declaratory and/or injunctive relief as may be
8 deemed appropriate.

9 ***FIFTH CLAIM FOR RELIEF***

10 **(Battery)**

11 **(By Wang Xiaoning and Shi Tao Against All Defendants)**

12 95. Plaintiffs re-allege and incorporate by reference the facts and allegations set forth in
13 paragraphs 1 through 66 of this Complaint as if fully set forth herein in this Fifth Claim for Relief.

14 96. On information or belief, Defendants intentionally committed acts that resulted in
15 harmful or offensive treatment of Plaintiffs’ persons, and produced bodily harm. Plaintiffs did not
16 consent to the contact and treatment that caused injury, damage, loss or harm to Plaintiffs.

17 97. The acts described constitute battery, actionable under the laws of California and the
18 United States.

19 98. Defendants are liable for aiding and abetting and/or ratifying these abuses, as
20 specified in this cause of action.

21 ***SIXTH CLAIM FOR RELIEF***

22 **(Assault)**

23 **(By Wang Xiaoning and Shi Tao Against All Defendants)**

24 99. Plaintiffs re-allege and incorporate by reference the facts and allegations set forth in
25 paragraphs 1 through 66 of this Complaint as if fully set forth herein in this Sixth Claim for Relief.

26 100. On information or belief, Defendants’ conduct caused Plaintiffs to be subjected to
27 numerous batteries and/or intentional invasions of their rights to be free from offensive and harmful
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1 contact, and said conduct demonstrated that Defendants had a present ability to subject Plaintiffs to
2 immediate, intentional, offensive and harmful touching.

3 101. The acts described herein constitute assault, actionable under the laws of California
4 and the United States.

5 102. Defendants are liable for aiding and abetting and/or ratifying these abuses, as set forth
6 in this cause of action.

7 ***SEVENTH CLAIM FOR RELIEF***

8 **(False Imprisonment)**

9 **(By Wang Xiaoning and Shi Tao Against All Defendants)**

10 103. Plaintiffs re-allege and incorporate by reference the facts and allegations set forth in
11 paragraphs 1 through 66 of this Complaint as if fully set forth herein in this Seventh Claim for
12 Relief.

13 104. On information or belief, Defendants intentionally and unlawfully exercised force or
14 the express or implied threat of force to restrain, detain or confine Plaintiffs on an arbitrary and
15 unlawful basis. The restraint, detention or confinement compelled Plaintiffs to stay or go
16 somewhere against their will for some appreciable time. Plaintiffs did not consent to this restraint,
17 detention or confinement.

18 105. Defendants' actions constituted false imprisonment under standards of law applied by
19 California and the United States.

20 106. Defendants are liable for aiding and abetting and/or ratifying these abuses as specified
21 in this cause of action.

22 ***EIGHTH CLAIM FOR RELIEF***

23 **(Intentional Infliction of Emotional Distress)**

24 **(By All Plaintiffs Against All Defendants)**

25 107. Plaintiffs re-allege and incorporate by reference the facts and allegations set forth in
26 paragraphs 1 through 66 of this Complaint as if fully set forth herein in this Eighth Claim for Relief.
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1 108. On information or belief, Defendants intended to cause Plaintiffs to suffer emotional
2 distress, or, in the alternative, (a) Defendants engaged in the conduct adversely affecting Plaintiffs
3 with reckless disregard of the high probability that it would cause Plaintiffs to suffer severe abuses
4 and emotional distress, (b) Plaintiffs were present at the time the outrageous conduct and these
5 results occurred and (c) the Defendants knew that Plaintiffs were present and would be adversely
6 affected.

7 109. Plaintiffs suffered severe abuse and emotional distress as a result of the conduct of the
8 Defendants.

9 110. Defendants' conduct constitutes the intentional infliction of emotional distress and is
10 actionable under the laws, standards, and causes of action as set forth in this complaint.

11 111. Defendants are liable for aiding and abetting and/or ratifying these abuses as set forth
12 in this cause of action.

13 ***NINTH CLAIM FOR RELIEF***

14 **(Negligence)**

15 **(By All Plaintiffs Against All Defendants)**

16 112. Plaintiffs re-allege and incorporate by reference the facts and allegations set forth in
17 paragraphs 1 through 66 of this Complaint as if fully set forth herein in this Ninth Claim for Relief.

18 113. On information or belief, Defendants failed to use ordinary or reasonable care in
19 order to avoid injury to Plaintiffs. Defendants' negligence was a cause of injury, damage, loss or
20 harm to Plaintiffs.

21 114. As a result of these acts, Plaintiffs suffered harm including, but not limited to, severe
22 emotional distress. Defendants' conduct constitutes negligence and is actionable under the causes of
23 action as set forth in this complaint.

24 115. Defendants are liable for aiding and abetting and/or ratifying these abuses as specified
25 in this cause of action.
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TENTH CLAIM FOR RELIEF

**(Violation of the California Business & Professional Code §§ 17200 *et seq.*,
Unfair Business Practices)**

(By All Plaintiffs Against All Defendants)

116. Plaintiffs re-allege and incorporate by reference the facts and allegations set forth in paragraphs 1 through 66 of this Complaint as if fully set forth herein in this Second Claim for Relief.

117. Plaintiffs bring this cause of action on behalf of themselves, pursuant to Business and Professions Code § 17204. The Defendants' conduct as alleged herein has been and continues to be deleterious to Plaintiffs, and Plaintiffs are seeking to enforce important rights affecting the public interest within the meaning of the Code of Civil Procedure § 1021.5.227. Plaintiffs also seek compensation for the loss of their property and the personal financial impacts they have suffered as a result of Defendants' unfair business practices.

118. The California Business and Professions Code §§ 17200 *et seq.* prohibits "unfair competition," defined as any "unlawful, unfair, or fraudulent business act or practice." These acts or practices consist of those forbidden by law.

119. The unlawful, unfair, and fraudulent business acts and practices described herein constitute ongoing and continuous unfair business practices within the meaning of Business and Professions Code §§ 17200 *et seq.*, as they are prohibited by state, federal, and international laws including but not limited to: (1) Electronic Communications Privacy Act, 18 U.S.C. § 2701 *et seq.*; (2) Alien Tort Statute, 28 U.S.C. § 1350; (3) Torture Victim Protection Act, 28 U.S.C. § 1350; (4) 18 U.S.C. § 2450 (federal statute criminalizing torture); (5) Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; (6) International Covenant on Civil and Political Rights; (7) Universal Declaration of Human Rights; (8) Charter of the United Nations; (9) International Labor Organization Convention No. 29 Concerning Forced or Compulsory Labor; and (10) Statutes and common law of the State of California, including but not limited to assault and battery, false imprisonment, negligence, intentional infliction of emotional distress, and negligent infliction of emotional distress. Defendant's acts described herein also violate universal, specific,

1 and obligatory customary international law, which prohibit aiding and abetting, and conspiracy to
2 commit, violations of *jus cogens* human rights norms.

3 120. Defendants' practices described herein offend established public policies and involve
4 business practices that are immoral, unethical, oppressive, unscrupulous and/or substantially
5 injurious to customers.

6 121. Such practices include, but are not limited to, the unwarranted provision of internet
7 users' private electronic communication information or records in order to be permitted to engage in
8 business in China, with the knowledge that such information would substantively support the torture,
9 battery, threats, and further intimidation of persons who used Defendants' services in China.
10 Members of the public have been in the past and will in the future likely be damaged by these
11 practices.

12 122. Defendants have also acted contrary to public policy by infringing upon the freedom
13 of speech and expression of the general public. Members of the public have been in the past and will
14 in the future likely be harmed by these practices.

15 123. The conduct as alleged herein constitutes clear violations of customary international
16 law, federal law, and the laws of California.

17 124. The furtherance of Defendants' role in the stream of commerce by providing
18 information which results in the aforementioned business practices creates an unfair business
19 advantage over competitors that do not utilize such practices from within California and the United
20 States.

21 125. Plaintiffs seek injunctive relief, disgorgement of all profits resulting from these unfair
22 business practices, restitution and other appropriate relief on behalf of themselves and members of
23 the general public as provided in Business and Professions Code § 17203.

ELEVENTH CLAIM FOR RELIEF

**(Violation of the Electronic Communications Privacy Act, 18 U.S.C. § 2701, §2702,
and §2511, Unlawful Access to Stored Communications)**

(By Wang Xiaoning and Shi Tao Against All Defendants)

126. Plaintiffs re-allege and incorporate by reference the facts and allegations set forth in paragraphs 1 through 66 of this Complaint as if fully set forth herein in this First Claim for Relief.

127. Upon information and belief, Defendants violated the rights of Plaintiffs herein by intercepting, disclosing, and/or intentionally using electronic communication between Plaintiffs and other persons. The right of a civil action arises under 18 U.S.C. 2707(a), which provides that any person aggrieved by any violation of the Electronic Communications Privacy Act, “in which the conduct constituting the violation is engaged in with a knowing or intentional state of mind may, in a civil action, recover from any person or entity, other than the United States, which engaged in that violation such relief as may be appropriate.”

128. Defendants exceeded their authorization to access and control private information concerning Plaintiffs’ electronic communications, in violation of 18 U.S.C. § 2701.

129. Defendants unlawfully and knowingly divulged Plaintiffs’ electronic communication contents and user information, in violation of 18 U.S.C. § 2702.

130. Defendants intentionally acquired and/or intercepted the contents of electronic communications sent by and/or received by Plaintiffs through the use of an electronic device. Defendants intentionally acquired the communications that had been sent from or directed to Plaintiffs through their use of computers and other electronic devices which were part of, and utilized in, Defendants’ electronic communications system, in violation of 18 U.S.C. § 2511 and pursuant to 18 U.S.C. § 2520.

131. Defendants unlawfully accessed and used, and voluntarily disclosed, the contents of the intercepted communications to enhance their business in China. This disclosure was not necessary for the operation of Defendants’ system or to protect Defendants’ rights or property.

132. Plaintiffs are “person[s] whose ... electronic communication is intercepted ... or intentionally used in violation of this chapter” within the meaning of 18 U.S.C. § 2520.

1 133. Defendants are liable directly and/or vicariously for this cause of action.

2 134. Plaintiffs therefore seek remedy as provided for by 18 U.S.C. § 2520, including such
3 preliminary and other equitable or declaratory relief as may be appropriate, damages consistent with
4 subsection (c) of that section to be proven at trial, punitive damages to be proven at trial, and a
5 reasonable attorney's fee and other litigation costs reasonably incurred.

6 **ABSENCE OF AVAILABLE AND EFFECTIVE REMEDIES IN CHINA**

7 135. These claims are not precluded by the need or failure to exhaust local remedies as set
8 out in the Torture Victim Protection Act since Plaintiffs have made every effort to seek local
9 remedies in China and Hong Kong, and their efforts have proven pointless and futile.

10 136. Plaintiff Wang Xiaoning has attempted to utilize domestic remedies, pleading the
11 laws of China, but the Chinese courts have convicted him and rejected his appeals in violation of
12 Chinese and international law and have rejected all other efforts to challenge the actions taken
13 against him. He exhausted all remedies available to him in the Chinese courts when the courts
14 rejected his second appeal on July 1, 2006.

15 137. Under Chinese law, Plaintiff Yu Ling would have a civil claim for her injuries were
16 her husband's conviction overturned. She has supported her husband's appeals not only to end the
17 abuses he is suffering and exonerate him, but also to establish her own right to a remedy. When the
18 courts rejected her husband's second appeal on July 1, 2006, Yu Ling lost any chance for local
19 remedies as well.

20 138. Plaintiff Shi Tao has similarly appealed his conviction in the Chinese courts, and lost.
21 He then filed a complaint with the Hong Kong Privacy Commission to challenge the Defendants'
22 actions. The Commissioner dismissed Shi Tao's complaint, finding that jurisdictional restrictions
23 prohibited the Commission from holding the Defendants responsible despite evidence from Chinese
24 court documents that the company and its agents played a material part in the convictions. This
25 outcome exhausts all of Shi Tao's possible remedies in Hong Kong and precludes the other Plaintiffs
26 from filing similar complaints under the privacy laws of Hong Kong.

27 139. Any further efforts to obtain relief in China could well result in serious reprisals
28 against those making allegations of wrongdoing on the part of high level officials in the PRC, as well

1 as against the local attorneys representing the complainants. High level officials of the PRC are
2 involved in the abuses alleged in this complaint and in the ratification of these abuses. Taking into
3 consideration that the PRC government used the courts of China to secure Plaintiffs' prolonged
4 arbitrary arrests and detentions, using a highly controlled judicial process to do so, and taking into
5 account the PRC government's refusal and/or inability to properly and effectively investigate acts of
6 torture, cruel, inhuman or degrading treatment or punishment, and arbitrary arrest and prolonged
7 detention and bring the perpetrators to justice, and given further other substantial indicators of
8 governmental acquiescence in the violations of international law and its unwillingness to support
9 legal initiatives that might be undertaken in PRC to obtain relief for Plaintiffs, efforts to secure
10 remedies for them in the PRC, including lawsuits in Chinese courts, must be considered futile. The
11 actions taken by the PRC government to revoke the license of Plaintiff Shi Tao's criminal defense
12 attorney and place him under house arrest just days before his trial, as well as similar actions against
13 Chinese human rights attorneys who defend persons accused of the types of charges for which
14 Plaintiffs Wang Xiaoning and Shi Tao were convicted, further indicate the futility of using the
15 Chinese judicial system to secure relief.

16 140. For these reasons, requirements for further exhaustion of efforts to obtain local relief
17 should be considered waived and satisfied.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, the Plaintiffs pray for judgment against Defendants Yahoo! Inc., Yahoo!
20 HK, Alibaba, and Other Presently Unnamed and to be Identified Individual Employees of Said
21 Corporations, as follows:

- 22 (a) For compensatory damages to each of the Plaintiffs according to proof to be
23 established at trial;
- 24 (b) For punitive and exemplary damages according to proof to be established at trial;
- 25 (c) For declaratory relief determining that the actions of the Defendants constituted
26 violations of international law, specifically, that such violations included prohibited
27 acts of torture, cruel, inhuman or degrading treatment, and arbitrary arrest and
28 prolonged detention for the peaceful and exchange of ideas, views, and political

1 beliefs in violation of the Convention Against Torture, numerous other international
2 treaty obligations binding on the United States, and domestic laws and regulations
3 implementing such standards, including the Torture Victim Protection Act, and other
4 enumerated causes of action in this Complaint;

- 5 (d) For affirmative action by the Defendants to secure the release of the detainees;
- 6 (e) For injunctive relief to prevent similar actions to be taken in the future;
- 7 (f) For costs of the litigation, including, attorneys' fees; and
- 8 (g) For such other relief as the Court deems just and proper.

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11 Respectfully submitted this 29th day of May, 2007,

12 WORLD ORGANIZATION FOR HUMAN
13 RIGHTS USA
14 MORTON SKLAR
15 THERESA HARRIS

16 By: /s/ Morton Sklar
Morton Sklar

17 HOLME ROBERTS & OWEN LLP
18 ROGER MYERS

19 By: /s/ Roger Myers
20 Roger Myers

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