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 6 Appearing Defendant YAHOO! HONG KONG,  
 LTD.

7  
 8 **UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
 9 **OAKLAND DIVISION**

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

13 Plaintiffs,

14 v.

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

19 Defendants.

**Case No. C07-02151 CW**

**DEFENDANT YAHOO!, INC.'S  
 ALTERNATIVE MOTION FOR A MORE  
 DEFINITE STATEMENT; PROPOSED  
 ORDER**

Date: November 1, 2007  
 Time: 2 p.m.  
 Location: Courtroom 2

Judge: Hon. Claudia Wilken

20 TO PLAINTIFFS AND THEIR COUNSEL OF RECORD:

21 PLEASE TAKE NOTICE THAT ON November 1, 2007, at 2 p.m., defendant Yahoo!,  
 22 Inc. ("Yahoo!") will and hereby does move, as an alternative to its concurrently filed motion to  
 23 dismiss, with prejudice, Plaintiffs' Second Amended Complaint for Tort Damages ("complaint"),  
 24 for a more definite statement pursuant to Rule 12(e) of the Federal Rules of Civil Procedure. This  
 25 motion is based on this notice of motion and motion, the following Memorandum of Points and  
 26 Authorities, the pleadings on file in this matter, the reply memorandum Yahoo! intends to file,  
 27 and any further argument the Court might allow.

28 Without waiving its objection to the exercise of personal jurisdiction in this case, specially


C07-02151 CW  
 YAHOO!'S ALTERNATIVE MOTION FOR  
 A MORE DEFINITE STATEMENT

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appearing defendant Yahoo! Hong Kong, Ltd. ("YHKL") joins this motion.

Dated: August 27, 2007

DANIEL M. PETROCELLI  
MATTHEW T. KLINE  
O'MELVENY & MYERS LLP

By:   
Daniel M. Petrocelli  
Attorneys for Defendant Yahoo! Inc and for  
specially appearing defendant Yahoo! Hong  
Kong, Ltd.

1 **I. DEFENDANTS ARE ENTITLED TO A MORE DEFINITE STATEMENT**

2 Defendants believe the entire complaint should be dismissed with prejudice pursuant to  
3 Rule 12(b). However, if the Court is not inclined to dismiss the complaint in its entirety,  
4 defendants ask, in this alternative motion, that it order a more definite statement pursuant to Rule  
5 12(e). The pleading rules are liberal, but a “plaintiff must disclose sufficient information to  
6 permit the defendant to have a fair understanding of what the plaintiff is complaining about.”  
7 *Kittay v. Kornstein*, 230 F.3d 531, 541 (2d Cir. 2000).

8 **A. The Complaint Is Fatally Ambiguous As To What “Facts” Are Alleged.**

9 The complaint’s most serious defect is its failure to allege *anything*—even plaintiffs’ own  
10 circumstances—as fact. The first sentence states: “Plaintiffs . . . allege upon personal knowledge  
11 *and belief as to their own circumstances*, and upon *information and belief . . . as to all other*  
12 *matters*, that substantial evidentiary support exists *or will exist . . .* in support of the following.”  
13 Compl. 2:2-6. Every “fact” that “follow[s]” carries this qualifier.<sup>1</sup> This is inappropriate:

- 14 • “[T]he framers of the rules did not intend to permit a plaintiff to subject a defendant to  
15 the various processes of the court without first stating *definite facts* upon which a  
16 judgment might be based.” *Fleming v. Dierks Lumber & Coal Co.*, 39 F. Supp. 237, 240  
17 (W.D. Ark. 1941). “[I]f a pleader cannot allege definitely and in good faith the existence  
18 of an essential element of his claim, it is difficult to see why this basic deficiency should  
19 not be exposed at the point of minimum expenditure of time and money by the parties and  
20 the court.” *Daves v. Hawaiian Dredging Co.*, 114 F. Supp. 643, 645 (D. Haw. 1953).
- 21 • A plaintiff may base his allegations upon “belief,” but only when the facts are  
22 “peculiarly within the knowledge of defendants.” *Bertucelli v. Carreras*, 467 F.2d 214,  
23 215 (9th Cir. 1972); 5 CHARLES WRIGHT & ARTHUR MILLER, FEDERAL PRACTICE AND  
24 PROCEDURE § 1224 (1990); 2-8 MOORE’S FEDERAL PRACTICE, CIVIL § 8.04(4) (2007).
- 25 • And a plaintiff must identify every allegation he makes that lacks evidentiary support.  
26 *See* FED. R. CIV. PROC. 11(b).

27  
28 <sup>1</sup> Although plaintiffs do, in their most recent amendment, identify some allegations that lack  
“evidentiary support,” Compl. ¶ 143, they never disclaim their initial statement.

1 The complaint violates all these basic rules.

2 **B. The Complaint Fails Adequately to Allege Plaintiffs' Injuries.**

3 Plaintiffs' ATS and TVPA claims are vague and conclusory. For example, even if  
4 plaintiffs could bring torture claims against defendants—and defendants vigorously dispute this—  
5 it is not enough for plaintiffs merely to say they were “tortured.” Whether conduct amounts to  
6 “torture” is a fact-intensive inquiry. *See Qi*, 349 F. Supp. 2d at 1278, 1316.

7 Shi alleges no specific facts—only the bare conclusions that he was tortured, forced to  
8 labor, and held at a prison notorious for abuse. *See Compl.* ¶¶ 12, 59, 66. Although Wang  
9 alleges he has been kept indoors, malnourished, subjected to “psychological tactics,” and was  
10 “repeatedly” “beaten” and “kicked” in the early part of his detention, *see Compl.* ¶¶ 10, 39, 45,  
11 substantially identical allegations were held to be too indefinite in *Price v. Socialist People's*  
12 *Libyan Arab Jamahiriya*, 294 F.3d 82, 93 (D.C. Cir. 2002). This Court, in *Qi*, 349 F. Supp. 2d at  
13 1316, relied on *Price* to assess several torture claims.

14 In *Price*, 294 F. 3d at 86, plaintiffs alleged they were kept in a “political prison” during  
15 trial; held in a “cramped cell with substandard plumbing that they were forced to share with seven  
16 other inmates”; endured “a lack of medical care, and inadequate food”; were “kicked, clubbed  
17 and beaten”; and “interrogated and subjected to physical, mental and verbal abuse.” Because  
18 there was no information about the “frequency, duration and parts of the body at which the  
19 beatings were aimed [nor] information about weapons used to carry them out,” *Price* held there  
20 was “no way to discern . . . whether plaintiffs' complaint merely alleges police brutality that falls  
21 short of torture.” *Id.* at 93-94. As in *Price*, plaintiffs' TVPA and ATS claims are “insufficient to  
22 survive [a] motion to dismiss.” *Id.* At the very least, a more definite statement is required.

23 **C. The Complaint Fails to Identify Which Defendants Did What.**

24 Rule 8 requires plaintiffs to clearly identify the basis for their claims against “*each*  
25 *defendant.*” *Rasidescu v. Midland Credit Mgmt., Inc.*, 435 F. Supp. 2d 1090, 1098-99 (S.D. Cal.  
26 2006) (“[E]very complaint must, at a minimum, give fair notice and state the elements of *each*  
27 *claim against each defendant* plainly and succinctly.”). Plaintiffs' complaint indiscriminately  
28 lumps “defendants” together and fails to “allege, with at least some degree of particularity, overt

1 actions taken by each defendant which support [their] claims.” *Id.* at 1099. Plaintiffs must plead  
2 more specifically.

3 **D. The Complaint Fails to Allege *How* Defendants Allegedly Injured Plaintiffs.**

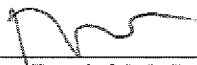
4 The complaint also fails to allege how defendants’ alleged disclosures could have caused  
5 plaintiffs’ injuries. First, the complaint makes no specific allegation that Yahoo! Inc. disclosed  
6 any information regarding the named plaintiffs. Only YHKL (a party over which this Court has  
7 no personal jurisdiction) is alleged to have disclosed any information regarding Wang Xiaoning  
8 or Shi Tao. Second, while there is a generic allegation that the disclosures “served as a basis for  
9 [their] acts of persecution and torture,” (Compl., ¶ 2), the complaint is silent about the causal  
10 connection, if any, between the disclosures and plaintiffs’ arrests, convictions, imprisonment, and  
11 alleged torture by Chinese authorities.<sup>2</sup> But in order “to give each defendant ‘fair notice’ of what  
12 they are being accused of,” plaintiffs must “allege, with at least some degree of particularity,  
13 overt actions taken by each defendant which support his claims.” *Rasidescu*, 435 F. Supp. 2d at  
14 1099. The complaint does not do so.

15 **II. CONCLUSION**

16 If the Court allows any claim to proceed—and we submit it should not—plaintiffs should  
17 be required to file a more definite statement pursuant to Rule 12(e).

18 Dated: August 27, 2007

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21 By:   
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Attorneys for Defendant Yahoo! Inc and for  
22 specially appearing defendant Yahoo! Hong  
23 Kong, Ltd.

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27 <sup>2</sup> Moreover, the documents cited in the complaint strongly suggest no causal connection. Each  
28 judgment, attached to defendants’ Mot. to Dismiss as Appx. A, Exs. B and C, respectively, shows  
that the information provided by Yahoo! was one of many pieces of evidence against plaintiffs.