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

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

12 Plaintiff,

13 v.

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

18 Defendant.

Case No. C07-02151 CW

**DEFENDANT YAHOO!, INC.'S NOTICE
 OF MOTION AND SPECIAL MOTION TO
 STRIKE PLAINTIFFS' STATE LAW
 CAUSES OF ACTION PURSUANT TO
 THE CALIFORNIA ANTI-SLAPP
 STATUTE**

Date: November 1, 2007

Time: 2 p.m.

Location: Courtroom 2

Judge: Hon. Claudia Wilken

19
 20 TO PLAINTIFFS AND THEIR COUNSEL OF RECORD:

21 PLEASE TAKE NOTICE THAT ON October 4, 2007, at 2 p.m. in Courtroom 2, 4th
 22 Floor, United States Courthouse, 1301 Clay Street, Oakland, California, defendant Yahoo!, Inc.
 23 ("Yahoo!") will and hereby does move to strike plaintiffs' six causes of action brought under
 24 California law—*i.e.*, plaintiffs' Fifth through Tenth Claims for Relief in their Second Amended
 25 Complaint ("complaint"). This special motion to strike is brought on the grounds that (1)
 26 plaintiffs' California causes of action are subject to the California anti-SLAPP statute, California
 27 Code of Civil Procedure § 425.16; and (2) are barred by California Civil Code § 47, which
 28 privileges the communications at issue in this case.

C07-02151 CW
 YAHOO!'S ANTI-SLAPP MOTION AND
 [PROPOSED] ORDER

1 This motion is based on this notice of motion and motion, the following Memorandum of
2 Points and Authorities, Yahoo!'s concurrently filed Motion to Dismiss Plaintiffs' Second
3 Amended Complaint, the pleadings on file in this matter, the reply memorandum Yahoo! intends
4 to file, and any further argument the Court might allow.

5 Dated: August 27, 2007

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

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8 By: 

9 Daniel M. Petrocelli
10 Attorneys for Defendant
11 YAHOO!, INC.
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1 **I. INTRODUCTION**

2 Plaintiffs' six causes of action brought under California law—their Fifth through Tenth
3 Claims for Relief—each must be stricken pursuant to California's anti-SLAPP statute and
4 California Civil Code section 47, because the claims are based on alleged acts of communications
5 with Chinese law enforcement officials concerning, what is by definition, a matter of public
6 concern—*i.e.*, alleged criminal activity. The anti-SLAPP statute, which is designed to protect
7 participation in matters of public concern, allows defendants an expedited means to challenge
8 lawsuits arising out of such communications. *See* CAL. CODE CIV. PROC. § 425.16. The anti-
9 SLAPP statute applies to supplemental state law claims brought in federal court, *see Globetrotter*
10 *Software, Inc. v. Elan Computer Group, Inc.*, 63 F. Supp. 2d 1127, 1129-30 (N.D. Cal. 1999), and
11 affords Yahoo! substantive and procedural protections, including the right to file this special
12 motion to strike. Civil Code section 47(b) is similar to the SLAPP statute and privileges
13 communications with law enforcement officials—even those that occur abroad—and shields
14 Yahoo! from liability arising out of such acts. Plaintiffs' claims in this case challenge
15 quintessential acts of communication protected by California law. Plaintiffs' Fifth through Tenth
16 Claims for Relief must be stricken.

17 **II. STATEMENT OF FACTS**

18 Plaintiffs allege they published pro-democracy literature in China, using Yahoo! China
19 email accounts and group lists. *See* Compl., ¶¶ 10, 12, 33-35, 53-54, 56. They allege the Chinese
20 government sought to prosecute plaintiffs under Chinese laws prohibiting such speech; and
21 Yahoo!, defendant Yahoo! Hong Kong, Ltd., and/or Yahoo! China (plaintiffs' allegations are
22 unclear) "provided Chinese officials with access to [plaintiffs'] private e-mail records, copies of
23 email messages, e-mail addresses, user ID numbers, and other identifying information"
24 *Id.* ¶¶ 2, 42, 62. Plaintiffs assert that "[t]hese disclosures served . . . as the basis" for their
25 prosecution and detention and that, once incarcerated, government officials abused them and
26 engaged in "acts of persecution." *Id.* ¶ 2. Plaintiffs are deliberately vague as to whether
27 defendants provided information to the Chinese government on their own accord or in response to
28 an official request from the Chinese government. All the complaint says is that defendants acted

1 “voluntarily.” *Id.* ¶ 2.

2 Plaintiffs contend that defendants’ disclosure of information aided and abetted the
3 misconduct of the Chinese government and violated federal, international, and California law. In
4 paragraph 4 of their complaint, plaintiffs describe their California claims. They say defendants
5 “violate[d] California state laws, including prohibitions against battery, false imprisonment,
6 assault, intentional infliction of emotional distress, negligence, negligent supervision, and the
7 California Business & Professions Code § 17200.” Compl. ¶ 4. Plaintiffs elaborate on their
8 California law claims in the “Causes of Action” section of their complaint and their Fifth through
9 Tenth Claims for Relief. *See id.* ¶¶ 69, 97-127.¹

10 For purposes of this motion, Yahoo! assumes the facts alleged in the complaint are true
11 and should be read most favorably to plaintiffs—*i.e.*, that Yahoo! played some role in the
12 transmittal of information regarding plaintiffs to the Chinese authorities. Even on these assumed
13 facts, the veracity of which Yahoo! does not concede, plaintiffs have failed to state a claim.

14 **III. PLAINTIFFS’ CALIFORNIA LAW CLAIMS MUST BE STRICKEN BECAUSE**
15 **YAHOO!’S ALLEGED COMMUNICATIONS WERE PRIVILEGED.**

16 Plaintiffs’ complaint could not more directly challenge Yahoo!’s right to engage in
17 communicative acts protected by California law. As both California state and federal courts have
18 recognized, California Civil Code § 47(b) privileges communications made to both domestic and
19 foreign law enforcement officials. *See Beroiz v. Wahl*, 84 Cal. App. 4th 485, 494-95 (Cal. Ct.
20 App. 2000) (§ 47(b) privilege applies to communications made to Mexican law enforcement); *E.*

21 _____
22 ¹ At times, plaintiffs suggest that their tort claims (*e.g.*, for battery) are brought under both “the
23 laws of California *and the United States.*” *Id.* ¶¶ 98-100 (emphasis added); *see also id.* ¶¶ 112,
24 116. Of course, “[t]here is no federal general common law” and, as the Supreme Court explained
25 70 years ago, “[e]xcept in matters governed by the Federal Constitution or Acts of Congress, the
26 law to be applied in any case *is the law of the State.*” *Erie Railroad Co v. Tompkins*, 304 U.S. 64,
27 78 (1938) (emphasis added). Because plaintiffs’ complaint directly invokes the law of the State
28 of California, Yahoo! assumes, for purposes of bringing this motion, that California law applies.
However, Yahoo! reserves the right to assert that California law does not apply to this case.
Cf. Radiation Sterilizers, Inc. v. U.S., 867 F. Supp. 1465, 1476 (E.D. Wash. 1994) (in ruling on
motions to dismiss, court did not decide whether Washington or Georgia law applied, but merely
determined whether plaintiffs’ causes of action, brought under Washington law, stated cognizable
claims under Washington law); *Panama Processes, S.A. v. Cities Services Co.*, 650 F.2d 408, 413
n.6 (2d Cir. 1981) (party reserved right to argue that Brazilian law applied, though it presently
argued under New York law).

1 & *J. Gallo Winery v. Andina Licores, S.A.*, Case No. CV F 05-0101, 2006 U.S. DIST. LEXIS
2 47206, at *24 (E.D. Cal. June 30, 2006) (privilege applies to communications made in Ecuador);
3 *Johnson v. Symantec Corp.*, 58 F. Supp. 2d 1107, 1110 (N.D. Cal. 1999) (“undisputed” that
4 privilege applies to communications “made in the context of ongoing governmental
5 investigations”). Given this rule, plaintiffs’ California law claims should either be dismissed
6 pursuant to Yahoo!’s concurrently filed motion to dismiss, or stricken pursuant to the anti-SLAPP
7 statute.

8 Adjudicating a SLAPP motion is a two-step process. First, the Court must determine
9 whether the defendant has met its burden of demonstrating that the anti-SLAPP statute applies.
10 *See Navellier v. Sletten*, 29 Cal. 4th 82, 88 (Cal. 2002). Second, if defendant meets that burden,
11 the plaintiffs must demonstrate they have stated a legally cognizable claim. *See id.*

12 In federal court, a plaintiff’s burden in response to an anti-SLAPP motion depends on the
13 nature of defendant’s challenge. If the challenge is based on legal defects on the face of the
14 pleadings, then plaintiffs’ burden is “analogous to [that of] a Rule 12(b)(6) motion to dismiss.”
15 *Rogers v. Home Shopping Network, Inc.*, 57 F. Supp. 2d 973, 982 (C.D. Cal. 1999). If, instead, a
16 defendant’s challenge is based on a lack of evidence to substantiate plaintiff’s claims, then the
17 plaintiff’s burden is analogous to a motion for summary judgment pursuant to Rule 56. *See id.* at
18 982-83. Here, Yahoo! challenges deficiencies on the face of the pleadings. Thus, plaintiffs’
19 allegations should be assumed true and their California law claims stricken only if they failed to
20 plead a “cognizable legal theory” or pled insufficient facts “under a cognizable legal theory.”
21 *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1988) (applying Rule 12(b)(6)).
22 Yahoo! contends plaintiffs’ claims are barred by California privilege law.

23 **A. The Anti-SLAPP Statute Applies.**

24 **1. Plaintiffs’ Claims Target Protected Acts of Communication.**

25 The SLAPP statute applies to any “cause of action against a person arising from any act of
26 that person in furtherance of that person’s right of petition or free speech under the United States
27 or California Constitution in connection with a public issue,” CAL. CODE CIV. PROC.
28 § 425.16(b)(1), including “any written or oral statement or writing made before a legislative,

1 executive, or judicial proceeding, or any other official proceeding authorized by law” and “any
2 written or oral statement or writing made in connection with an issue under consideration or
3 review by a legislative, executive, or judicial body, or any other official proceeding authorized by
4 law,” *id.* §§ 425.16(e)(1)-(2). Plaintiffs’ California claims fall within the scope of the SLAPP
5 statute because they arise from communications with government officials concerning an official
6 investigation.

7 California courts have uniformly held that such communications are protected:

- 8 • In *Briggs v. Eden Council for Hope & Opportunity*, 19 Cal. 4th 1106, 1115 (Cal.
9 1999), the California Supreme Court held that statements made to investigators for the
10 Department of Housing and Urban Development fell within the ambit of the statute.
- 11 • In *Dickens v. Provident Life & Accident Ins. Co.*, 117 Cal. App. 4th 705, 713-717
12 (Cal. Ct. App. 2004), the California court of appeal held that the statute protected
13 statements made to federal prosecutors that resulted in plaintiffs’ prosecution.
- 14 • In *Siam v. Kizilbash*, 130 Cal. App. 4th 1563, 1569-1570 (Cal. Ct. App. 2005), the
15 Court of Appeal held that defendant’s reports of child abuse to police qualified.
- 16 • And in *Computerpress, Inc. v. Jackson*, 93 Cal. App. 4th 993, 1009-10 (Cal. Ct. App.
17 2001), the court held that SLAPP applied to complaints filed with the SEC.

18 None of these results is surprising. As the California Supreme Court has recognized: “it [is] the
19 duty of every citizen to cooperate with the police in their investigation of crime and to provide
20 information to investigating officers,” and defendants cannot be held liable for “fulfill[ing] this
21 duty.” *Hagberg v. Calif. Fed. Bank FSB*, 32 Cal. 4th 350, 373 (Cal. 2004).

22 Under any reading of the complaint, defendants’ alleged communications are protected.
23 Even assuming Yahoo! *volunteered* information to the PRC—which it did not—its actions, like
24 those in *Briggs*, *Dickens*, *Siam*, and *Computer Express*, are fully protected. *See Dickens*, 117 Cal.
25 App. 4th 705 at 707-08 (lawsuit is subject to SLAPP because “Dickens’s cause of action . . .
26 challenges the actions of [defendants] in allegedly playing an instrumental role in procuring the
27 criminal prosecution against him.”)

28

1 If Yahoo!'s communications were made in response to a formal legal request, then those
2 communications deserve even greater protection. Testimony given before public bodies,
3 evidence produced in response to subpoenas or legal process, and reports made in response to
4 official requests for information are all "protected activities" under the SLAPP statute. *Greka*
5 *Integrated, Inc. v. Lowrey*, 133 Cal. App. 4th 1572, 1580 (Cal. Ct. App. 2005) ("Lowrey
6 disclosed information about Greka to his counsel, to authorities and in deposition and trial
7 testimony *in response to subpoenas. These are all protected activities.* Accordingly, Lowrey met
8 his burden to show the complaint arose from protected speech.") (citing CAL. CODE CIV. PROC. §
9 425.16(e)(1) (statements made "before a legislative, executive, or judicial proceeding, or any
10 other official proceeding authorized by law" are protected activity)) (emphasis added); *Gallanis-*
11 *Politis v. Medina*, 152 Cal. App. 4th 600, 611 (Cal. Ct. App. 2007) (holding that "investigation
12 and report . . . conducted and written in response to a request for information from" County
13 official were "acts in furtherance of [defendants'] right of petition or free speech," and, thus,
14 protected by the SLAPP statute).

15 **2. No Good Reason Exists to Exempt Plaintiffs' Claims from the Statute.**

16 Plaintiffs have not indicated whether they believe the SLAPP statute applies in this case.
17 If they argue against its application, such arguments should be rejected.

18 First, plaintiffs may argue that because they filed this lawsuit to protect their free speech
19 rights—and not to interfere with defendants' rights and duties to speak—the SLAPP statute
20 should not apply. Such an argument would be misguided. The SLAPP statute applies even when
21 plaintiff's lawsuit is not motivated by a desire to chill defendant's speech. *See Dickens*, 117 Cal.
22 App. 4th 705 at 716-17. Even if that were not the rule, plaintiffs clearly intend to silence
23 defendants: they seek "injunctive relief to stop any further disclosures of user information" to the
24 PRC. Compl. at 34.

25 Second, plaintiffs might argue that SLAPP should not apply to communications with
26 foreign law enforcement officials. However, plaintiffs assert claims based on *California* law
27 against a *California* defendant and are, therefore, subject to *California* defenses. Moreover,
28

1 identical language in California's related litigation privilege statute, *see* CAL. CIV. CODE § 47(b),
2 has been held to apply to communications with foreign law enforcement officials.

3 The Ninth Circuit has held that the anti-SLAPP statute furthers "important, substantive
4 state interests," and should be applied to California claims absent a direct conflict with other laws.
5 *United States ex rel. Newsham v. Lockheed Missiles & Space Co.*, 190 F.3d 963, 973 (9th Cir.
6 1999) (extending SLAPP statute's protection to California claims in federal diversity actions).
7 Although a court in this district has recently concluded that the SLAPP statute may not apply to
8 claims *filed* in another jurisdiction and *governed by the substantive law* of that jurisdiction, it
9 recognized that the SLAPP statute does govern "cases where California substantive law was
10 being applied." *Schering Corp. v. First DataBank, Inc.*, 2007 U.S. Dist. LEXIS 50164 at *8
11 (N.D. Cal. Apr 20, 2007). "California has a great interest in determining how much protection to
12 give California speakers" who are sued for California torts. *Id.* at *17. Plaintiffs cannot claim the
13 protections of California law but avoid its burdens.²

14 Moreover, in determining the scope of the SLAPP statute's protections, California courts
15 have often looked to California Civil Code section 47(b), which contains identical language.
16 Though the conduct protected by the two statutes is not identical, courts often examine "the scope
17 of the litigation privilege to determine whether a given communication falls within the ambit of
18 subdivision (e)(1) and (2) [of the SLAPP statute]." *Flatley v. Mauro*, 39 Cal. 4th 299, 322 (Cal.
19 2006); *see also Dickens*, 117 Cal. App. 4th at 715 ("because the defendants' conduct would have
20 been privileged under Civil Code section 47 subsection (b), *it would have necessarily been*
21 *protected activity under section 425.16*") (emphasis added); *Sylmar Air Conditioning v. Pueblo*
22 *Contracting Servs.*, 122 Cal. App. 4th 1049, 1058 (Cal Ct. App. 2004) ("Communications within
23

24 ² Indeed, one Illinois federal court held that, "because California has a great interest in
25 determining how much protection to give California speakers," the SLAPP statute may apply to
26 protect California defendants even where another state's substantive law does govern the
27 underlying action. *See Global Relief Found. v. New York Times Co.*, 2002 U.S. Dist. LEXIS
28 17081 at *32-33 (N.D. Ill 2002) (holding that California defenses to defamation, including
SLAPP, applied even though defamation claim was otherwise governed by Illinois law) (citing
RESTATEMENT (SECOND) OF CONFLICTS § 145, cmt. d (1971) ("[T]he local law of the state where
the parties are domiciled, rather than the local law of the state of conflict and injury, may be
applied to determine whether one party is immune from tort liability to the other.")).

1 the protection of the litigation privilege of Civil Code section 47, subdivision (b) are equally
2 entitled to the benefits of section 425.16.”); *Contemporary Services Corp. v. Staff Pro Inc.*, 152
3 Cal. App. 4th 1043, 1055 (Cal. App. 2007) (“Both section 425.16 and Civil Code section 47 are
4 construed broadly, to protect the right of litigants to the utmost freedom of access to the courts
5 without [the] fear of being harassed subsequently by derivative tort actions. Thus, it has been
6 established for well over a century that a communication is absolutely immune from any tort
7 liability if it has ‘some relation’ to judicial proceedings.”); *but see Flatley*, 39 Cal. 4th at 322-23
8 (finding an instance where the protections did not overlap because the purpose of the SLAPP
9 statute was not served by protecting activities conclusively established to be crimes).

10 Section 47(b) has been held to apply to communications abroad. *See Beroiz v. Wahl*, 84
11 Cal. App. 4th 485 494-95 (Cal. Ct. App. 2000), *E. & J. Gallo Winery v. Andina Licores, S.A.*,
12 Case No. CV F 05-0101, 2006 U.S. DIST. LEXIS 47206, at *24 (E.D. Cal. June 30, 2006). In
13 *Beroiz*, 84 Ca. App. 4th at 490-91, for example, the defendant was an American citizen living in
14 Mexico who filed criminal charges against American members of a Mexican homeowners’
15 association. The members of the homeowners’ association sued the defendant in California court
16 for defamation based on statements made to a Mexican district attorney. *See id.* In ruling that
17 section 47(b) applied, the court noted that the question was an issue of first impression in
18 California, but both out-of-state precedents and the public policy rationales supporting
19 section 47(b) argued strongly in favor of applying it broadly to shield defendants from suit. *See*
20 *id.* at 909-12.

21 Similarly, in *E. & J. Gallo*, Andina sued Gallo in Ecuador for breach of contract. *See*
22 2006 U.S. Dist. LEXIS at *1-9. Gallo then sued Andina in California for declaratory relief,
23 breach of contract, unfair competition, and abuse of process. *See id.* Relying on *Beroiz*,
24 *E. & J. Gallo* held that statements made in connection with foreign legal proceedings were
25 protected under section 47(b). *See id.* at *26-28.³

26 ³ Both courts said that if the foreign legal system was “devoid of adequate procedural
27 safeguards,” and defendants used the foreign legal process as a means and with the intent to harm
28 plaintiffs, then the absolute privilege afforded by § 47(b) might not apply. *See id.*; *see Beroiz*, 84
Cal. App. 4th at 494-96. But where, as here, there is no claim that defendants acted with malice,
the privilege applies to communications outside the state.

1 Indeed, American courts generally have refused to allow plaintiffs to hold defendants
 2 liable for engaging in conduct abroad that would be protected speech here. *See, e.g., Bachchan v.*
 3 *India Abroad Publ'ns, Inc.*, 585 N.Y.S. 2d 661, 664-65 (N.Y. Sup. Ct. 1992) (where plaintiff filed
 4 suit in U.S. to enforce foreign libel judgment, court refused to enforce judgment because foreign
 5 tribunal had not provided defendant with various substantive and procedural free speech
 6 defenses).⁴ And courts in numerous countries⁵ and virtually every state⁶ privilege

7
 8 ⁴ *See also Beroiz*, 84 Cal. App. 4th at 494:

9 In *Vanderkam v. Clarke* (S.D.Tex. 1998) 993 F. Supp. 1031, 1031-1032, the
 10 executive director of a scandal-ridden Irish corporation brought an action against a
 11 lawyer appointed by the High Court of Ireland to investigate the corporation, alleging
 12 that the lawyer's communication of his official findings had defamed the director. The
 13 district court in *Vanderkam* held that the lawyer's conduct was absolutely privileged,
 14 reasoning that the lawyer had published his findings as ordered by the Irish court, and
 15 that under Texas law, lawyers are privileged to publish otherwise defamatory material in
 16 connection with a judicial proceeding. (*Id.* at p. 1032.)

17 Similarly, in *Sorge v. City of New York* (1968) 56 Misc.2d 414, 415 [288 N.Y.S.2d
 18 787, 790-791], two police officers in New York City testified, at the request of the State
 19 Department of the United States, at a hearing before an Italian judge regarding criminal
 20 activity in Italy. When the officers were sued for defamation, the court in *Sorge* held
 21 that their testimony during the Italian judicial proceeding was absolutely privileged
 22 under New York law. (288 N.Y.S.2d at pp. 798-799.)

23 Finally, in *Bakhshandeh v. American Cyanamid Company* (S.D.N.Y. 1962) 211 F.
 24 Supp. 803, 804, an Iranian citizen sued an American corporation for defamation,
 25 alleging, inter alia, that the corporation's employees had made defamatory remarks to an
 26 Iranian governmental official in Tehran. Citing primarily New York law, the district
 27 court in *Bakhshandeh* determined that these remarks to the Iranian official were subject
 28 to a qualified privilege, and thus they were not actionable absent proof of malice. (*Id.* at
 pp. 808-809.)

29 ⁵ *See, e.g., Mann v. O'Neill* (1997) 191 C.L.R. 204 at 216 (Austl.) ("Complaints to prosecuting
 30 authorities—'statements in aid of justice', as they are sometimes called—enjoy qualified
 31 privilege."); *Pleau v. Simpsons-Sears Ltd.*, (1976) 15 O.R. 2d 436 (Ont. C.A.) at ¶16 (Qualified
 32 privilege applied to defendant's publication of a notice to employees regarding possible forged
 33 checks bearing plaintiff's name; reasoning that published statement was privileged because
 34 defendant "acted at the request of the local police"); *Lupee v. Hogan*, (1920) 47 N.B.R. 492 (N.B.
 35 C.A.) at ¶9 ("universally recognized" rule that "all material statements made by persons interested
 36 in the detection of a crime during their investigations, and material thereto, are privileged");
 37 *Padmore v. Lawrence*, 11 Ad. & El. 380, 382 (K.B. 1840) (Coleridge, J.) (Great Britain: "For the
 38 sake of public justice, charges and communications, which would otherwise be slanderous, are
 39 protected if bona fide made in the prosecution of inquiry into suspected crime."); *Martin v.*
 40 *Watson*, [1994] Q.B. 425 at p. 437 (Great Britain: "[Q]ualified privilege . . . applies to a statement
 41 made to a police officer by way of reporting a complaint."); Susanna Frederick Fischer,
 42 *Rethinking Sullivan*, 34 Geo. Wash Int'l L. Rev. 101, 118-26 (2002) (English law privileges
 43 "statement[s] made to the police concerning the commission of a crime"; noting that the laws of
 44 Australia, New Zealand, and England are similar; showing that statutory developments in all three
 45 countries have not changed the common law privilege for communications to police); *Hardaker*
 46 *v. Phillips*, 2005 (4) SA 515 (S. Afr.) (discussing qualified privilege that attaches to witness
 47 statements in ongoing prosecutorial proceedings).

1 communications to law enforcement. In short, the SLAPP statute—like section 47(b)—should be
2 read broadly to apply in this case.

3 3. Finally, plaintiffs may not argue that their claims under Business & Profession
4 Code section 17204 are exempt from the SLAPP statute. California Code of Civil Procedure
5 section 425.17 exempts claims “brought *solely* in the public interest” when the “plaintiff does *not*
6 seek any relief greater than or different from the relief sought for the general public.” CAL. CODE
7 CIV. PROC. § 425.17(b), (b)(1) (emphasis added.) Although plaintiffs advert to the “public
8 interest” in describing their section 17204 claims, Compl. ¶ 119, they concede that they “bring
9 this cause of action on behalf of *themselves*” and “seek compensation for the loss of *their*
10 *property and the personal financial impacts they have suffered,*” *id.* (emphasis added). As a
11 result, section 425.17 does not exempt their claims. *See, e.g., Ingels v. Westwood One Broad.*
12 *Servs., Inc.*, 129 Cal. App. 4th 1050, 1067 (Cal. Ct. App. 2005) (“[b]ecause appellant alleges and
13 seeks recovery of damages personal to himself, his claim fails to meet the first requirement set out
14

15 ⁶ *See General Elec. Co. v. Sargent & Lundy*, 916 F.2d 1119, 1125-27 (6th Cir. 1990) (Kentucky);
16 *Borg v. Boas*, 231 F.2d 788, 794 (9th Cir. 1956) (Idaho); *Kahermanes v. Marchese*, 361 F. Supp.
17 168, 172 (E.D. Pa. 1973); *Marsh v. Commercial & Sav. Bank of Winchester, Va.*, 265 F. Supp.
18 614, 621 (W.D. Va. 1967); *Cutts v. Am. United Life Ins. Co.*, 505 So. 2d 1211, 1215 (Ala. 1987);
19 *Miller v. Nuckolls*, 91 S.W. 759, 761, 762 (Ark. 1905); *Kress v. Self*, 526 P.2d 754, 756 (Ariz. Ct.
20 Appl. 1974); *Burke v. Greene*, 963 P.2d 1119, 1122 (Colo. 1998); *Flanagan v. McLane*, 87 Conn.
21 220, 87 A. 727, 728 (1913); *Newark Trust Co. v. Bruwer*, 141 A.2d 615, 617 (Del. 1958);
22 *Fridovich v. Fridovich*, 598 So. 2d 65, 67, 68 (Fla. 1992); *Hardaway v. Sherman Enters., Inc.*,
23 210 S.E.2d 363, 364 (Ga. 1974); *Starnes v. Int'l Harvester Co.*, 539 N.E.2d 1372-75 (Ill. 4th Dist.
24 1989); *Indiana Nat. Bank v. Chapman*, 482 N.E.2d 474, 479 (Ind. Ct. App. 4th Dist. 1985);
25 *Winckel v. Von Maur Inc.*, 652 N.W.2d 453 (Iowa 2002); *Faber v. Byrle*, 229 P.2d 718 (Kan.
26 1951); *Cormier v. Blake*, 198 So. 2d 139, 144 (La. Ct. App. 3d Cir. 1967); *Robinson v. Van*
27 *Auken*, 76 N.E. 601, 602 (Mass. 1906); *Packard v. Central Maine Power Co.*, 477 A.2d 264, 268
28 (Me. 1984); *Kefgen v. Davidson*, 617 N.W.2d 351 (Mich. Ct. App. 2000); *Smits v. Wal-Mart*
Stores, Inc., 525 N.W.2d 554, 557 (Minn. Ct. App. 1994); *Arnold v. Quillian*, 262 So. 2d 414,
415 (Miss. 1972); *Hancock v. Blackwell*, 41 S.W. 205, 207 (Mo. 1897); *Pierce v. Oard*, 37 N.W.
677, 679 (Neb. 1888); *Hampe v. Foote*, 47 P.3d 438, 440 (Nev. 2002); *Dijkstra v. Westerink*, 401
A.2d 1118-21 (N.J. App. Div. 1979); *Grossman v. Fieland*, 483 N.Y.S.2d 735, 736 (2d Dep't
1985); *Averitt v. Rozier*, 458 S.E.2d 26 (N.C. 1995); *Richmond v. Nodland*, 552 N.W.2d 586
(N.D. 1996); *Paramount Supply Co. v. Sherlin Corp.*, 16 Ohio App. 3d 176 (8th Dist. Cuyahoga
County 1984); *Magness v. Pledger*, 334 P.2d 792, 795 (Okla. 1959); *Ducosin v. Mott*, 642 P.2d
1168, 1169-70 (Or. 1982); *Sylvester v. D'Ambra*, 54 A.2d 418, 420 (R.I. 1947); *Moore v. Bailey*,
628 S.W.2d 431, 436 (Tenn. Ct. App. 1981); *Hott v. Yarbrough*, 245 S.W. 676, 678, 679 (Tex.
Comm'n App. 1922); *Schnupp v. Smith*, 457 S.E.2d 42 (Vt. 1995); *Story v. Shelter Bay Co.*, 760
P.2d 368, 372-73 (Wash. App. Div. 1 1988); *Otten v. Schutt*, 113 N.W.2d 152, 156 (Wis. 1962);
Lever v. Cmty. First Banestates, 989 P.2d 634 (Wyo. 1999); *Columbia First Bank v. Ferguson*,
665 A.2d 650 (D.C. 1995).

1 in section 425.17, subdivision (b)").

2 **B. Plaintiffs Claims Are Barred by Civil Code Section 47(b).**

3 Because Yahoo! has shown the SLAPP statute applies, plaintiffs bear the burden to show
4 each of their six California claims is cognizable. *See Navellier*, 29 Cal. 4th at 88. Plaintiffs'
5 California claims fail as a matter of law, as fully addressed in Yahoo!'s concurrently filed motion
6 to dismiss. *See Mot.* at 27-31, 35-36.

7 One infirmity that pervades each of plaintiffs' California claims—and the one most
8 closely tied to the anti-SLAPP statute—is the privilege afforded by Civil Code section 47(b). *See*
9 *id.* at 18-19. The privilege, as noted above, is read broadly by Californian courts to shield
10 defendants from liability for communicating with law enforcement officials. *See Johnson*, 58 F.
11 Supp. 2d at 1110. That privilege applies to communications in the United States and abroad. *See*
12 *Beroiz*, 84 Cal. App. at 494-95; *E. & J. Gallo Winery*, 2006 U.S. DIST. LEXIS 47206, at *24.
13 And that privilege is an absolute bar to plaintiffs' six California claims. *See Moore v. Conliffe*, 7
14 Cal. 4th 634, 638 n.1 (Cal. 1994) ("Although the protection afforded by the statute is commonly
15 denominated a 'privilege,' which creates a 'privileged communication,' section 47(b) does not
16 create an evidentiary privilege that protects a communication from compelled disclosure. Instead,
17 the section 47(b) privilege operates as a limitation on liability, precluding use of the protected
18 communications and statements as the basis for a tort action other than for malicious prosecution.
19 Thus, section 47(b) creates what in many other contexts is termed an 'immunity' from suit.").

20 **IV. CONCLUSION**

21 For the foregoing reasons, Yahoo!'s anti-SLAPP motion should be granted and plaintiffs'
22 six causes of action brought under California law—their Fifth through Tenth Claims for Relief—
23 should be immediately stricken from plaintiffs' Second Amended Complaint.

24 Dated: July 27, 2007

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