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16 Attorneys for Plaintiffs

17 **UNITED STATES DISTRICT COURT**  
 18 **NORTHERN DISTRICT OF CALIFORNIA**  
 19 **SAN FRANCISCO DIVISION**

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

24 Plaintiffs,

25 v.

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

Defendants.

Case No. C07-02151 CW/JCS

**TORT DAMAGES CLAIM**

**DECLARATION OF MORTON SKLAR IN  
 SUPPORT OF OPPOSITION TO  
 DEFENDANTS' MOTION FOR  
 PROTECTIVE ORDER GOVERNING  
 CONFIDENTIAL INFORMATION**

Magistrate Judge: Hon. Joseph C. Spero

29 I, MORTON SKLAR, declare:

- 30 I am the Executive Director of the World Organization for Human Rights USA,  
 31 attorney of record and lead counsel for the Plaintiffs in the above-captioned case, and  
 32 a former Judge (for nine years) with one of the two international courts operated by  
 33 the Organization of American States. This declaration is being submitted pursuant to

1 Civil Local Rule 7-5 in support of Plaintiffs' Opposition to Defendants' Motion for  
2 Protective Order Governing Confidential Information. Except where otherwise  
3 indicated, I have personal knowledge of the facts stated herein and, if called as a  
4 witness, I could and would testify competently thereto.

- 5
- 6 2. Over the past few weeks, I have discussed with Defendants' Counsel their concerns  
7 regarding a Stipulated Protective Order. I have been primarily responsible for  
8 communicating and exchanging information with the Attorneys for the Defendants in  
9 connection with their Proposed Protective Order Submission.
- 10 3. We first received a draft of the Defendants' Proposed Protective Order at 5:33 PM on  
11 July 26, 2007. At that time the Parties were in the midst of dealing with a number of  
12 other complicated and time consuming issues and court pleadings, including  
13 submission of a Joint Stipulation and related material on the Plaintiffs' Second  
14 Amended Complaint and accompanying revised case management time schedule  
15 (completed on or about July 27) and the dropping of Alibaba, Inc. as a named  
16 Defendant, as well as the negotiations and an exchange of briefs between the parties in  
17 connection with the issue of requesting the views of the U.S. Department of State on  
18 the potential foreign policy impacts of the case. The Defendants also had asked us to  
19 extend the page limit from 25 to 65 pages for their Motion to Dismiss, and we were  
20 discussing that proposal as well. Much of this activity was taking place at around the  
21 same time that the Defendants presented to us for our views their Proposed Protective  
22 Order.
- 23
- 24
- 25 4. On August 2, I sent an email to the Defendants with the primary purpose of setting up  
26 a "meet and confer" discussion on the State Department Statement of Interest issues.  
27 In that email communication I indicated that we had "been a bit slow getting back with  
28

1 you on the other items” under review at the time, including the Proposed Protective  
2 Order, “since there have been so many matters to review.” I specified in that email  
3 that “we have several matters to discuss regarding the Draft Protective Order that you  
4 proposed.”

- 5
- 6 5. On August 10, I sent an email devoted exclusively to the Protective Order issues,  
7 listing and explaining our specific concerns/objections to the Proposed Order, based  
8 upon an analysis we had made of the Defendants’ proposals and some preliminary  
9 legal research we had done on the issues posed by the Defendants’ Proposed Order.  
10 That analysis indicated that, contrary to the assurance they gave us in their email on  
11 July 26 sending us the draft that the draft “tracks the Northern District of California  
12 form order,” in fact the proposed order departed from the model form in a number of  
13 significant ways, notably the deletion of the provision prohibiting the “mass,  
14 indiscriminate or routinized” overuse of protective designations, and the addition of  
15 other provisions limiting liability for improper designations. In addition Defendants  
16 adamantly refused to accept a provision that would preserve free accessibility and use  
17 of information in the public domain.  
18
- 19 6. Based in large part on these discrepancies we rejected the proffered joint stipulation on  
20 the Defendants’ proposed order.
- 21
- 22 7. Attached as Exhibit A is a true and correct copy of the draft Joint Stipulated Protective  
23 Order that Defendants’ Counsel sent to me via email as the basis of our negotiations.
- 24 8. Attached as Exhibit B is a true and correct copy of the Form Stipulated Protective  
25 Order for the Northern District of California, available at  
26 [http://www.cand.uscourts.gov/cand/form.nsf/7813fd3053452aef88256d4a0058fb31?O](http://www.cand.uscourts.gov/cand/form.nsf/7813fd3053452aef88256d4a0058fb31?OpenView)  
27 [penView](http://www.cand.uscourts.gov/cand/form.nsf/7813fd3053452aef88256d4a0058fb31?OpenView) (last visited Aug. 23, 2007).  
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9. A comparison of these documents demonstrates very precisely some of the reasons why we rejected the Defendants' Proposed Order, and decided to support adoption of an alternative order incorporating provisions more in line with prevailing court approved standards aimed at preventing overuse of the protective designation process.
10. We note that the Defendants changed the Proposed Order they submitted to us in several material ways when they submitted their proposal to the Court for approval, including adding the previously deleted prohibition on "mass and indiscriminate" overuse of the system. But they did not agree to inclusion of provisions we had proposed, consistent with case law precedent, aimed at protecting against over-designations, and prohibiting coverage of information in the public domain.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed in Washington, D.C. on this 27th day of August 2007.

/s/ Morton Sklar  
Morton Sklar  
Executive Director  
World Organization for Human Rights  
USA