

1 Morton, H. Sklar, Executive Director  
 2 msklar@humanrightsusa.org  
 3 World Organization for Human Rights USA  
 4 2029 P Street NW, Suite 301  
 5 Washington, DC 20036  
 6 Telephone: (202) 296-5702  
 7 Facsimile: (202) 296-5704  
 8 [Admitted *Pro Hac Vice*]

9 Roger Myers (CA State Bar No. 146164)  
 10 roger.myers@hro.com  
 11 HOLME ROBERTS & OWEN LLP  
 12 560 Mission Street, 25<sup>th</sup> Floor  
 13 San Francisco, CA 94105-2994  
 14 Telephone: (415) 268-2000  
 15 Facsimile: (415) 268-1999

16 [Additional Attorneys Appear on Signature Page]

17 Attorneys for Plaintiffs

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

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

25 Plaintiffs,

26 v.

27 YAHOO, INC., a Delaware Corporation,  
 28 YAHOO! HONG KONG LTD., a Foreign  
 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

**TORT DAMAGES CLAIM**

**DECLARATION OF MORTON SKLAR  
 SUPPORTING MOTION FOR INITIAL AND  
 JURISDICTIONAL DISCOVERY**

**Judge: Hon. Claudia Wilken**

I, MORTON SKLAR, declare:

1. I am the Executive Director of the World Organization for Human Rights USA,  
 attorney of record and lead counsel for the Plaintiffs in the above-captioned case.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

2. This declaration is being submitted pursuant to Civil Local Rules 7-1(a)(1) and 7-5 in support of Plaintiffs' Motion for Initial and Jurisdictional Discovery. Except where otherwise indicated, I have personal knowledge of the facts stated herein and, if called as a witness, I could and would testify competently thereto.

3. On August 27, 2007, pursuant to the Court order of July 26, 2007, Defendants filed five Motions related to Plaintiffs' Second Amended Complaint:

- A Motion to Dismiss for Lack of Personal Jurisdiction over Yahoo! Hong Kong,
- A Motion to Dismiss for Lack of Subject Matter Jurisdiction under Federal Rules 12(b)(1) and (7),
- A Motion to Dismiss under Rule 12(b)(6) for failure to state a claim,
- A Motion to Strike State of California Causes of Action pursuant to the Anti-SLAPP Statute, and
- An Alternative Motion for a More Definite Statement under Rule 12(e).

4. During meet and confer discussions with Defendants' Counsel on September 7, I informed Defendants' Counsel that Plaintiffs would seek initial and jurisdictional discovery in order to properly respond to these motions. I further explained that we would request the Court to hold the briefing schedule in abeyance so that Plaintiffs could conduct initial and jurisdictional discovery. In response, Defendants asked for additional information on what type of discovery Plaintiffs would seek and what legal arguments we would present for this request. Defense counsel stated that they would most likely oppose initial and jurisdictional discovery, taking the position that the court can and should decide on the pleadings filed in the case so far. At their request, and as part of our continuing case management discussions, I agreed to provide

1 Defense Counsel with a more specific description of the proposed limited discovery to  
2 respond to their motions.

3  
4 5. In this, and in subsequent meet-and-confer sessions on these and related matters on  
5 September 10 and 13, covering a total of approximately three and one-half hours of  
6 telephonic discussions, I laid out for the Defendants' Counsel an outline of what the  
7 factual initial and jurisdictional discovery plan would cover, and the legal bases for  
8 these requests in the relevant provisions of the Federal Rules of Civil Procedure and  
9 associated case law, including several case citations to court decisions issued in Rule  
10 12 initial and jurisdictional discovery situations.

11  
12 6. In our second meet and confer discussion on these matters on September 10, I  
13 provided Defense Counsel with a detailed description of the limited discovery we  
14 would request, including the number of document requests, interrogatories, and  
15 depositions and the subject matter of those requests for discovery, as well as concrete  
16 examples of how specific requests were tailored to particular portions of the  
17 Defendants' claims under several of the specific motions they submitted. We also told  
18 counsel that this discovery would focus solely on the issues raised in the motions to  
19 dismiss, motion for a more defined statement, and motion to strike that they filed on  
20 August 27. Defense Counsel replied that this was not sufficient information for them  
21 to determine which discovery requests they would accept so they would oppose the  
22 entire motion.

23  
24 7. On the afternoon of September 13, 2007, Defense Counsel informed me by telephone  
25 that they were unalterably opposed to the initiation of initial and jurisdictional  
26 discovery, since discovery was not, in their view, necessary to deal with their motions  
27 to dismiss and associated motions. They further stated that they would not support our  
28

1 motion to enlarge time for submission of our response to their motions to dismiss  
2 pending a decision on Plaintiffs' motion for initial and jurisdictional discovery, nor  
3 would they stipulate to a 21-day extension for filing Plaintiffs' response to the motions  
4 to dismiss and associated motions. Later that day, Defendants' Counsel confirmed  
5 their position by email and requested that we describe their positions on the motions in  
6 our accompanying Declarations.  
7

- 8 8. Defendants' Counsel has set out in writing the following bases (this review is not  
9 inclusive) for their opposition to both Plaintiffs' motion for initial and jurisdictional  
10 discovery and the associated motion to hold in abeyance their Response to the  
11 Defendants' motions pending completion of discovery, as well as the alternative  
12 motion for a 21-day extension of Plaintiffs' deadline to respond to the Defendants'  
13 motions. Defendants' positions were indicated as follows:  
14

15 Defendants oppose the "need for discovery," since their motions "accept as true  
16 the facts alleged in the second amended complaint." Their basic position is that  
17 the Plaintiffs' Complaint "fails to state a cognizable legal claim," and they seek a  
18 "ruling from the court on these arguments" without the reasons why discovery is  
19 needed. They do not believe we have provided specifically enough of the  
20 discovery that is needed to oppose or address the Defendants' motions. They  
21 anticipate opposing the alternative motion for a 21-day extension of time to file the  
22 Plaintiffs' Response because we "seek this extension in order to file and  
23 accelerate" our request for initial and jurisdictional discovery, and to "indefinitely  
24 postpone [Plaintiffs'] response to defendants' motions."  
25

- 26 9. Given the Defendants' unalterable opposition to the initiation of initial and  
27 jurisdictional discovery, and their position that no discovery related to their motions is  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

relevant or needed, it has become necessary for Plaintiffs to file this motion to initiate the initial and jurisdictional discovery process. This reality is bolstered by the fact that Defendants would not even accept an extension of time for Plaintiffs' Response to the motions filed on August 27, so long as such an extension was linked to a discovery request.

10. On September 13, 2007, my staff asked the Calendar Clerks in Judge Wilken's and Judge Spero's chambers for clarification on which Judge should hear these motions, since the motions request a change in the briefing schedule on the Motions to Dismiss but also relate to discovery matters, which Judge Wilken has referred to Judge Spero. Both Clerks informed us that the Motions should go before Judge Wilken.

11. 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 14th day of September 2007.

/s/ Morton Sklar  
Morton Sklar



