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14 **UNITED STATES DISTRICT COURT FOR THE**  
15 **NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

16 DOE I, DOE II, Ivy HE, DOE III, DOE IV,  
17 DOE V, DOE VI, ROE VII, Charles LEE,  
18 ROE VIII, and LIU Guifu,

19 Plaintiffs,

20 vs.

21 CISCO SYSTEMS, INC., John CHAMBERS,  
22 Thomas LAM, Owen CHAN, and DOES 1-  
100,

23 Defendants.  
24  
25  
26  
27  
28

Case No. 5:11-cv-02449-JF

Assigned to the Honorable Jeremy Fogel,  
U.S.D.J.

**PLAINTIFFS' OPPOSITION TO**  
**DEFENDANTS' NOTICE OF PENDENCY**  
**OF RELATED ACTION OR PROCEEDING**

Action filed: May 19, 2011  
Scheduling Conference: August 26, 2011,  
10:30am  
Courtroom: 3, 5th Floor

1 **TO THE COURT AND ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 On May 19, 2011, Doe I, Doe II, Ivy HE, Doe III, Doe IV, Doe V, Doe VI, Roe VII,  
3 Charles LEE, Roe VIII, and LIU Guifu, (collectively “Plaintiffs”) filed suit against Cisco Systems,  
4 Inc., John CHAMBERS, Thomas LAM, and Owen CHAN (collectively “Defendants”) in the  
5 above-captioned case. *See* Complaint, Docket Entry (“DE”) 1. Defendants in their July 21, 2011  
6 Notice of Pendency of Related Action or Proceeding (“Notice”) erroneously attempt to  
7 characterize this suit as “involv[ing] all or a material part of the same subject matter” as that of an  
8 entirely factually and legally distinguishable case filed on June 6, 2011 in the District of Maryland,  
9 *Daobin et al. v. Cisco Systems et al.*, Case no. 8:11-cv-01538-PJM.<sup>1</sup> Notice, DE 38 at 2:3-4.  
10 Although the above-captioned case shares some obvious similarities with *Daobin*, the two cases at  
11 their core are factually distinct and rely upon different legal theories, and thus are not related.  
12 Further, coordination of the two cases will not conserve resources or promote efficient  
13 determination of the action, and would be prejudicial to Plaintiffs.

14 Pursuant to Local Rule 3-13, Plaintiffs respectfully oppose the Notice on the grounds that:

15 1. This Action and *Daobin* Do Not Call for the Determination of the Same or Substantially  
16 Related Questions of Law and Fact

17 There are a number of significant legal and factual differences between the two  
18 cases:

19 *First*, Plaintiffs, citizens and residents of both the United States and China, are  
20 Falun Gong practitioners who allege that they suffered gross human rights violations and  
21 religious persecution at the hands of Public Security officers in China due to Defendants’  
22 collaboration with the Chinese Communist Party (“CCP”) in the design, supply and  
23 maintenance of the censorship and surveillance network known as the Golden Shield.  
24 Complaint, DE 1 at 1:4-16. Defendants’ technology was designed to enable the CCP to  
25 eavesdrop, tap and intercept communications, identify, track, surveil, apprehend, arrest,  
26 interrogate and torture Falun Gong practitioners in order to subject them to additional

27  
28 <sup>1</sup> A copy of the *Daobin et al. v. Cisco Systems et al.* complaint is attached hereto for the Court’s  
convenience as Exhibit A.

1 human rights abuses. *Id.* Conversely, the *Daobin* plaintiffs are not Falun Gong members,  
2 but political activists alleging political persecution at the hands of the Chinese government.  
3 *Daobin* Complaint, Exhibit A at 6-7, ¶¶ 14-15. This distinction requires different evidence  
4 pertaining to different persecutory campaigns in China and involves potentially relevant  
5 legal distinctions between state actors and non-state actors. *See generally id.* at 5-7.

6 *Second, Daobin* names a defendant who is not named here, namely Rick Justice,  
7 Executive Advisor at Cisco Systems, Inc. Allegations against this defendant require proof  
8 not required in the above-captioned case.

9 *Third,* Plaintiffs brought the instant action as class representatives and will move to certify a  
10 class of individuals similarly situated – a motion which will involve investigation into numerous  
11 legal and factual questions. *See* Complaint, DE 1 at 35:15-17. *Daobin* does not seek class action  
12 status and therefore need not enter into any of the certification inquiries required by Fed. R. Civ. P.  
13 Rule 23. *See generally Daobin* Complaint, Exhibit A at 5-7.

14 *Fourth,* the two cases raise altogether different federal and state claims, including a number  
15 of state claims employing different legal standards. Specifically, Plaintiffs allege a violation of 18  
16 U.S.C. § 2512(1), which prohibits the manufacture and sale of any electronic device knowing or  
17 having reason to know that the design of the device makes it primarily useful for the purpose of the  
18 surreptitious interception of wire, oral, or electronic communications. *See* Complaint, DE 1 at 44-  
19 45. Plaintiffs also assert state law claims for wrongful death and unfair business practices under  
20 Cal. Bus. & Prof. Code § 17200 et seq. *Id.* at 49-51. These claims raise legal issues that are not  
21 present in *Daobin*. The *Daobin* plaintiffs furthermore allege claims for unlawful access to stored  
22 communications, *see Daobin* Complaint, Exhibit A at 31-33, and Maryland state law claims for  
23 negligence and intentional infliction of emotion distress, *see id.* at 30-31, which are not part of  
24 Plaintiffs’ complaint.

25 *Fifth, Daobin* involves plaintiffs whose dissident activity and form of surveillance are  
26 factually distinct from the activity and surveillance of the Plaintiffs in the above-captioned case.  
27 The *Daobin* plaintiffs individually enjoyed a much higher profile in China than any of the named  
28 Plaintiffs here, and were subjected to physical as well as online surveillance. The Plaintiffs in the

1 above-captioned case, on the contrary, were subjected almost exclusively to surveillance of their  
2 online activity through use of the Golden Shield, until they were subsequently identified, arrested,  
3 detained and tortured.

4 *Sixth*, the two cases seek different forms of relief. While the *Daobin* plaintiffs seek  
5 monetary and declaratory relief only, *see id.* at 35-36, Plaintiffs here also seek to enjoin Defendants  
6 from future unlawful activity. Complaint, DE 1 at 52.

7 2. Coordination or Transfer of the Cases to the Same District Would Further Expend  
8 Resources and Prejudice Plaintiffs

9 Defendants argue in the Notice that coordination of this case and *Daobin* would conserve  
10 resources. Notice at 2:23-24. However, for the reasons given above, coordination of the two cases  
11 does not make sense for the following reasons: it would not conserve judicial or party resources but  
12 rather require additional such resources to separately argue and manage the numerous legal and  
13 factual distinctions, and would likely have the effect of hindering the speedy and efficient  
14 prosecution of each action. Indeed, Defendants have already requested a stay of *Daobin* pending the  
15 outcome of their forthcoming motion to dismiss in this case, and subjecting the *Daobin* plaintiffs to  
16 further delay while class certification is decided here would cause further prejudice.

17 Additionally, transfer pursuant to 28 U.S.C. § 1407 is not warranted. Coordination and  
18 transfer would complicate, rather than streamline, the judicial processes of both cases. This case is  
19 a class action brought by practitioners of Falun Gong who have been subjected to human rights  
20 violations through online surveillance techniques enabled by implementation of the Golden Shield,  
21 which Defendants were instrumental in creating. The *Daobin* plaintiffs are neither Falun Gong  
22 practitioners nor does their complaint allege that they were identified only through the use of the  
23 Golden Shield. Accordingly, there are few, if any, common questions and transfer is not  
24 appropriate.

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1           Therefore, for all the reasons listed above, Plaintiffs respectfully oppose the Notice of  
 2 Pendency of Related Action or Proceeding filed by Defendants and request that the Court find that  
 3 *Doe 1 et al.* and *Daobin* are not related and are not subject to coordination or transfer.  
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5 DATED: August 4, 2011

Respectfully submitted,

SCHWARCZ, RIMBERG, BOYD &  
 RADER, LLP

9 By:           /s/ K. Lee Boyd                                  
 10       K. Lee Boyd, Esq.  
 11       Attorneys for Plaintiffs

HUMAN RIGHTS LAW FOUNDATION

14 By:           /s/ Terri E. Marsh                                  
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