

1 KATHRYN LEE CRAWFORD-BOYD, ESQ. (SBN 189496)
 lboyd@srbr-law.com
 2 RAJKA L. SHAH, ESQ. (SBN 232994)
 rshah@srbr-law.com
 3 **SCHWARCZ, RIMBERG, BOYD & RADER, LLP**
 6310 San Vicente Boulevard, Suite 360
 4 Los Angeles, California 90048
 Phone: (323) 302-9488, Fax: (323) 931-4990

5 TERRI MARSH, ESQ. (*pro hac vice*)
 terri.marsh@hrlf.net
 6 BRIAN PIERCE, ESQ. (*pro hac vice*)
 brianp@hrlf.net
 7 **HUMAN RIGHTS LAW FOUNDATION**
 1615 L Street NW, Suite 1100
 8 Washington, D.C. 20036
 Phone: (202) 369-4977, Fax: (323) 931-4990

10 JUDITH BROWN CHOMSKY (*pro hac vice*)
 jchomsky@igc.org
 11 **LAW OFFICES OF JUDITH BROWN CHOMSKY**
 8210 New Second Street
 12 Elkins Park, PA 19027
 Phone: (215) 782-8327, Fax: (215)782-8368

13 Attorneys for PLAINTIFFS

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

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

Case No. 5:11-cv-02449-EJD-PSGx
 Assigned to the Hon. Edward J. Davila

**PLAINTIFFS' MOTION TO
 RESCHEDULE BRIEFING**

[N.D. Cal. Local Rule 7-11]

19
20 Plaintiffs,

Action Filed: May 19, 2011
 FAC Filed: Sept. 2, 2011

21 vs.

22 CISCO SYSTEMS, INC., John
 23 CHAMBERS, Thomas LAM, Owen
 24 CHAN, Fredy CHEUNG, and DOES 1-
 25 100,

26 Defendants.

1 MOTION

2 This Motion is brought in light of the fact that the parties have agreed that at
3 least a partial stay of the Defendant’s Motion to Dismiss filed on September 23,
4 2011 (Docket Entry 67) (“Motion to Dismiss”) is warranted in light of the Supreme
5 Court’s grant of a writ of certiorari on October 17, 2011 in *Kiobel v. Royal Dutch*
6 *Petroleum Co. and Mohamad v. Rajub*, Nos. 10-1491 and 11-88, --- S.Ct. ----, 79
7 USLW 3728 (2011) (“*Kiobel*”), and in light of the complex analysis put forth by
8 the Ninth Circuit in *Sarei v. Rio Tinto, PLC*, --- F.3d ----, 2011 U.S. App. LEXIS
9 21515 (9th Cir. Oct. 25, 2011), both of which directly bear on a number of grounds
10 upon which the Defendants base their Motion to Dismiss.¹ Therefore, Plaintiffs
11 hereby request that the Court stay briefing of all issues raised in Defendants’
12 Motion to Dismiss, to be rescheduled after the Supreme Court issues its decision in
13 *Kiobel*, with the exception of three dispositive issues unaffected by *Kiobel* which
14 bear on the justiciability of the entire case at bar: (1) whether the case presents a
15 non-justiciable political question, (2) whether the complaint challenges an act of
16 state, and (3) whether the case violates principles of international comity.² All three

17 ¹ The Supreme Court in *Kiobel* will be addressing two questions: (1) whether the issue of
18 corporate civil tort liability under the Alien Tort Statute (“ATS”), 28 U.S.C. § 1350, is a merits
19 question or instead an issue of subject matter jurisdiction; and (2) whether corporations are
20 immune from tort liability for violations of the law of nations or may instead be sued in the same
21 manner as any other private party defendant under the ATS. Here, Plaintiffs allege claims under
22 the ATS against a corporation for violations of the law of nations, and Defendants have moved to
23 dismiss the case due to a lack of jurisdiction over claims against corporations under the ATS. The
24 Supreme Court will also address the issue of whether a claim against a corporation may be
25 brought under the Torture Victim Protection Act (“TVPA”), 28 U.S.C. § 1350 note, in *Mohamad*.
26 Here, Defendants have moved to dismiss arguing that the corporations cannot be sued under the
27 TVPA and that TVPA precludes claims against corporations under the ATS. The Ninth Circuit’s
28 decision in *Sarei* also bears on questions of corporate liability, as well as a number of other issues
bearing directly on the Defendants’ Motion to Dismiss, including whether the ATS applies
extraterritorially, whether aiding and abetting liability is available under the ATS, what standard
applies to aiding and abetting liability, whether the specific claims are sufficiently specific and
obligatory to be permitted under the ATS, and whether the claims were adequately pled. *Sarei*, at
*6-7.

² Defendants agree that all other issues raised in their Motion to Dismiss should be heard
following a decision in *Kiobel*. See Declaration of Rajika Shah (“Shah Decl.”), at ¶¶ 3, 6. Thus,
the only disagreement between the parties is whether briefing on only these three issues (political

1 issues which Plaintiffs request not be stayed are dispositive questions based upon
2 Article III separation of powers concerns and prudential considerations. *See, e.g.,*
3 *Nixon v. United States*, 506 U.S. 224, 252-253 (1993) (political question); *Siderman*
4 *de Blake v. Republic of Argentina*, 965 F.2d 699, 707 (9th Cir. 1992) (act of state);
5 *Mujica v. Occidental Petroleum Corp.*, 381 F. Supp. 2d 1134, 1155 (C.D. Cal.
6 2005) (citing *Ungaro-Benages v. Dresdner Bank AG*, 379 F.3d 1227, 1237 (11th
7 Cir. 2004)) (international comity). Further, these broader issues are unaffected by
8 the outcome of *Kiobel*.

9 Courts are empowered to delay proceedings as part of their inherent power to
10 “control the disposition of the causes on its docket with economy of time and effort
11 for itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254
12 (1936). Courts have delayed proceedings where cases being heard by superior
13 courts bear on issues related to the case at hand. *See In re Mut. Funds Inv.*
14 *Litigation*, 2011 WL 3819608 (D. Md. 2011). Doing so “promote[s] judicial
15 efficiency and avoid[s] the possibility of inconsistent rulings.” *Id.*

16 ///

17 ///

18 ///

19
20
21
22
23
24
25
26 question, act of state, and international comity) should go forward now. While *Sarei* touched
27 upon these three issues, *Sarei* at *39-47, Plaintiffs offered Defendants an opportunity to re-brief
28 them in light of *Sarei*, which Defendants declined. *See* Shah Decl. at ¶ 6. Accordingly, Plaintiffs
propose filing their Opposition brief on the three specified issues only on November 18, 2011, but
remain open to a new briefing schedule.

