

infrastructure project. The Complaint asserts novel and complex international law claims under the Alien Tort Statute (“ATS”), Torture Victim Protection Act (“TVPA”), and other statutory and common law provisions. Defendants intend to seek dismissal of the Complaint on the grounds that it is factually baseless, legally unsound, and inappropriate for resolution by this or any other United States-based court.

II. ARGUMENT

It is well established that “[a] district court has inherent power to stay proceedings to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Popoola v. MD-Individual Practice Assoc.*, 2001 WL 579774, 2 (D. Md. 2001) (quoting *Landis v. North American Co.*, 299 U.S. 248, 254 (1936)). See also *Clinton v. Jones*, 520 U.S. 681, 706-07 (1997) (citing *Landis* for the same proposition); *Climax Molybdenum Co. v. M/V Seatrain Antwerp*, 51 B.R. 192, 195 (D. Md. 1984) (power to stay proceedings is within the inherent powers of a trial court) (citation omitted). In reliance on the foregoing authority, the *Popoola* Court granted a stay pending resolution of an appeal that involved the same legal issues and was awaiting decision in the Fourth Circuit Court of Appeals.

Here, Defendants’ response to the Complaint, and of all other proceedings in this action, should be stayed pending a ruling in a parallel Northern District of California case, and a pending Fourth Circuit appeal. Such a stay is appropriate in the interests of justice and judicial economy.

A. This Action Should Be Stayed Pending a Decision in the *Doe* Action.

This action is duplicative of an action previously filed and pending in the Northern District of California. *Doe v. Cisco*, No. 5:11-cv-02449 (the “*Doe*” action). The *Doe* Complaint is asserted on behalf of Chinese citizens and residents who allege that the government of China

persecuted them as a penalty for their religious views; and that the Defendants are secondarily liable for this alleged wrongdoing by virtue of having designed, customized, and sold internet routers and related equipment and services to Chinese government entities in support of China's so-called "Golden Shield" internet infrastructure project. The factual allegations concerning police misconduct and Cisco business practices in the *Doe* action are nearly identical to those at issue here, putting aside certain minor differences. The defendants in the *Doe* action are all defendants here. And the legal claims in the *Doe* action — including claims under the ATS and TVPA — are also at issue here.

Defendants intend to seek dismissal of the *Doe* Complaint just as they intend to seek dismissal here. Indeed, Defendants' motion to dismiss the *Doe* complaint will be filed and served by August 4, 2011, by stipulation of the parties in *Doe*. Due to the duplicative nature of the actions, a decision on Defendants' motion to dismiss the *Doe* complaint will necessarily implicate, and potentially resolve, the legal issues relevant to this action — at a minimum providing substantial assistance in assessing the propriety of the instant Complaint. There is little sense in briefing the same issues simultaneously in the *Doe* action and in this action. The more efficient and sensible approach, and the approach best suited to the orderly disposition of this case, is to stay Defendants' response to the instant Complaint pending the *Doe* court's ruling on Defendants' forthcoming motion to dismiss that action.

B. This Action Should Be Stayed Pending the Fourth Circuit's Decision in *Aziz*.

Several of the most fundamental legal issues posed by the Plaintiffs' Complaint are currently pending before the Fourth Circuit. *Aziz v. Alcolac*, No. 10-1908. The Fourth Circuit heard argument in *Aziz* on May 12, 2011. The questions presented in that appeal include whether and when a corporation can be sued under the ATS and TVPA, and what level of intent is

required to be alleged in order to state a claim for secondary liability under those statutes.²

Those questions are directly at issue in the instant action, which asserts multiple ATS and TVPA claims against corporate Defendant Cisco on the basis of purported secondary liability.³

It is at this point entirely unclear how the Fourth Circuit will resolve these questions, which have never been ruled upon by the Fourth Circuit Court of Appeals and which in recent weeks and months have become the subject of significant national circuit splits.⁴ Efficiency and judicial economy suggest that the parties and the Court ought not address these unsettled issues if the Fourth Circuit will soon resolve them in *Aziz*. Indeed, generic statistics regarding time to decision in the Fourth Circuit suggest that a decision in *Aziz* may issue within the next month or so. A briefing schedule on Defendants' contemplated motion to dismiss the Complaint, should await that decision.

² See *Aziz v. Iraq*, 1:09-cv-00869-MJG (D. Md.) (slip op. June 9, 2010) (dismissing the Complaint as against the sole corporate defendant); *Aziz v. Alcolac*, No. 10-1908 (4th Cir.) (Brief of Appellee, responding to issues on appeal) (attached as Exhibit A).

³ See Docket No. 1 (Complaint), causes of action at 22, 24, 25, 27, 33.

⁴ First, as to corporate liability under the ATS, see *Flomo v. Firestone Nat. Rubber Co., LLC* ___ F.3d ___, 2011 WL 2675924 (7th Cir. July 11, 2011) (corporate liability “limited to cases in which the violations are directed, encouraged, or condoned at the corporate defendant’s decisionmaking level”); *Doe v. Exxon Mobil Corp.*, ___ F.3d ___, 2011 WL 2652384 (D.C. Cir. July 8, 2011) (corporate liability available); *Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d 111 (2d Cir. 2010) (corporate liability unavailable); *Romero v. Drummond Co.*, 552 F.3d 1303, 1315 (11th Cir. 2008) (ATS “grants jurisdiction from complaints of torture against corporate defendants”).

Second, as to corporate liability under the TVPA, see *Mohamad v. Rajoub*, 634 F.3d 604 (D.C. Cir. 2011) (no corporate liability); *Bowoto v. Chevron Corp.*, 621 F.3d 1116 (9th Cir. 2010) (no corporate liability); *Romero v. Drummond Co.*, 552 F.3d 1303, 1315 (11th Cir. 2008) (allowing TVPA claim to go forward against a corporation); *Khulumani v. Barclay Nat. Bank Ltd.*, 504 F.3d 254 (2d Cir. 2007) (no corporate liability).

Third, as to the secondary liability standard, see *Doe v. Exxon Mobil Corp.*, ___ F.3d ___, 2011 WL 2652384 (D.C. Cir. July 8, 2011) (adopting a “knowledge” requirement); *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 582 F.3d 244, 258 (2d Cir. 2009) (adopting a “purpose” requirement).

III. CONCLUSION

For the foregoing reasons, Defendants respectfully request entry of an order staying Defendants' response to this Complaint, as well as any further progress in this litigation, until the later of: (a) the *Doe* court's decision on Defendants' forthcoming August 4, 2011 motion to dismiss, and (b) the Fourth Circuit's decision in *Aziz*. This is the approach best tailored to furthering the ends of justice, judicial economy, and the orderly resolution of both actions.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

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