

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JIAN ZHANG, GUANG YANG, WA XUE, TIAN CHENG WANG  
LIQUN CHEN, SHENQI FU, SHUYUAN  
SONG, YUHONG ZHANG,  
Plaintiffs,

COMPLAINT

-against-

Plaintiffs Request Jury Trial

BAIDU.COM INC., PEOPLE'S REPUBLIC OF CHINA,  
Defendants.

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PRELIMINARY STATEMENT

1. This is a civil action in which the Plaintiffs, JIAN ZHANG, GUANG YANG, WA XUE, TIAN CHENG WANG, LIQUN CHEN, SHENQI FU, SHUYUAN SONG, YUHONG ZHANG are residents of the State of New York, seek relief for violations of the Unites States Constitution and Title 42 §§1981, 1983, 1985 as a result of Defendants' systematic violation of the constitutional rights of Plaintiffs, and the Defendants' systematic conspiracy to violate the U.S. Constitutional rights of the Plaintiffs, the Defendants' systematic violation of Plaintiffs' New York State Constitutional rights and the Defendants' violation of Plaintiffs' rights under New York State Human Rights Law, New York Civil Rights Law and New York State Executive Law.
2. The Plaintiffs seek damages, both compensatory and punitive, affirmative and equitable relief in excess of \$75,000, an award of costs and attorneys fees and such other and further relief as this Court deems just and equitable.

## JURISDICTION

3. Jurisdiction is conferred upon this Court by 28 U.S.C. §§1331, 1332, 1343(a), this being an action seeking redress for violation of the Plaintiff's constitutional and civil rights under U.S. Law and under the laws of the State of New York. The New York City and New York State claims are properly before this Court under the Court's supplemental jurisdiction. 28 U.S.C. § 1367.

4. Plaintiff's claim for declaratory and injunctive relief is authorized by 28 U.S.C. §2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure.

**5. The Plaintiff demands a trial by jury on each and every one of his claims as pled herein.**

## VENUE

6. Venue is proper for the United States District Court for the Southern District of New York pursuant to 28 U.S.C. §§1391 (a), (b) and (c).

## PARTIES

7. The Plaintiffs are all residents of the State of New York and are promoters of democracy in China through their writings, publications and reporting of pro-democracy events. JIAN ZHANG is a resident of 7 Heather Hill Road in Glen Head, New York, GUANG YANG is a resident of 7 Heather Hill Road in Glen Head, New York, WA XUE is a resident of 7 Heather Hill Road in Glen Head, New York, , LIQUN CHEN resides at 41-58 71<sup>st</sup> Street Woodside, New York, SHENQI FU resides at 84-27 57<sup>th</sup> Road Elmhurst, New York, SHUYUAN SONG resides at 59-29 69<sup>th</sup> Avenue Flushing, New York, YUHONG ZHANG resides at 144-16 35<sup>th</sup> Avenue Flushing, New York and TIAN CHENG WANG resides at 161-18 65<sup>th</sup> Avenue Fresh Meadows, New York.

8. The Defendant is an internet web-based search engine. BAIDU.COM INC., is incorporated in the Cayman Islands and listed on the NASDAQ as a publicly traded entity here in the United States. Defendant BAIDU.COM INC. provides services to locate information, products and services on the World Wide Web using Chinese-language search terms. The user-agent string of BAIDU.COM INC.'s search engine is *baiduspider*. Web user agents range from web browsers to search engine crawlers (spiders), which are applications that access the World Wide Web.

9. The Defendant PEOPLE'S REPUBLIC OF CHINA, located in Asia, is a communist/authoritarian state ruled by the Communist Party of China that severely restricts the freedom of press, freedom of political speech, freedom of internet, freedom of reproductive rights, and the freedom of religion. The Defendant PEOPLE'S REPUBLIC OF CHINA openly and routinely uses censorship of political speech and information on the internet to silence criticism of the government in China and the ruling Chinese Communist Party.

#### STATEMENT OF FACTS

10. The Plaintiffs in this case are various supporters of the democracy movement in China. Although they are all residents of the United States, New York, they are supporters of the democracy movement in The People's Republic of China through their various publications, writings and coverage of pro-democracy events in the media.

11. Each named plaintiff has been aggrieved by the censorship policies of BAIDU.COM INC. and THE PEOPLE'S REPUBLIC OF CHINA, in that their writings, publications and coverage of pro-democracy events has been censored and banned from any search performed on the BAIDU.COM INC. search engine and do not appear in any

search results performed on the web based search engine as a direct result of the conspiracy between BAIDU.COM INC. and THE PEOPLE'S REPUBLIC OF CHINA to censure any political speech that is pro-democracy and specifically that pro-democracy political speech of each of the Plaintiffs in this case.

12. BAIDU.COM INC. is a web services company that offers Chinese search engine for websites, audio files, and images; it owns and operates a search engine called Baidu.com.

13. BAIDU.COM INC., offers multiple services to locate information, products and services using Chinese-language search terms, such as, search by Chinese phonetics, advanced search, snapshots, spell checker, stock quotes, news, images, video, weather, train and flight schedules and other local information.

14. BAIDU.COM INC., proactively censors its content here in the United States in cooperation with and according to the policies and regulations of THE PEOPLE'S REPUBLIC OF CHINA.

15. When using the search engine owned by BAIDU.COM INC. no results are returned for any pro-democracy movement articles, publications or any type of multimedia coverage by Plaintiffs in this case.

16. BAIDU.COM INC., in conjunction with and as agent and enforcer of the policies of THE PEOPLE'S REPUBLIC OF CHINA, purposely designs its systems and search engines to exclude any pro-democracy topics, articles, publications and multimedia coverage by Plaintiffs that are present on the World Wide Web.

17. A web search engine is designed to search for information of the World Wide Web and FTP servers. The search results are generally presented in a list of results and

are often called hits. The information may consist of web pages, images, information and other types of files.

18. Some search engines also mine data available in databases or open directories. Unlike web directories, which are maintained by human editors, search engines operate algorithmically or are a mixture of algorithmic and human input.

19. While there is no generally accepted formal definition of "algorithm," an informal definition could be "a set of rules that precisely defines a sequence of operations.

20. BAIDU.COM INC., in conjunction with and as agent and enforcer of the policies of THE PEOPLE'S REPUBLIC OF CHINA, purposely designs its search engine algorithms to exclude any pro-democracy topics, articles, publications and multimedia coverage by Plaintiffs that are present on the World Wide Web.

*Individual Claims of the Plaintiffs: Baidu and Baidu.com Blocks Publications And Videos And Any Content Dealing With The Chinese Democracy Movement From Appearing In Its Search Engine Results.*

21. BAIDU.COM INC. and THE PEOPLE'S REPUBLIC OF CHINA have consistently and systematically cooperated with each other and conspired to violate the rights of Plaintiffs under the United States Constitution, Title 42 §§1981, 1983, 1985 under the New York State Constitution and under New York State Human Rights Law, New York Civil Rights Law, New York State Executive Law and the New York State Constitution.

22. Defendants censor and block from search engine results any article, publication, video, audio and any information in whatever format if its content deals with the Democracy movement in China or any of the following topics that are related to the Chinese Democracy movement: The June 4<sup>th</sup> Movement, The Jasmine Revolution, The

Jasmine Movement; The China Democracy Party National Committee and the Tiananmen Square Incident or movement.

23. Each of these words, phrases, articles and publications of any kind are systematically blocked by BAIDU.COM INC. as agent and enforcer of the anti-democracy policies of THE PEOPLE'S REPUBLIC OF CHINA from its search engine results because of the content and issues that it raises dealing with the democracy movement in China.

24. Plaintiff, Tiancheng Wang has published numerous articles, audio and video programs, all of which are available to the public on the internet via any of the well known search engines such as Google, Yahoo and Bing.

25. However, since December 2, 2010 to the present, Mr. Wang has published a series of articles dealing with the democracy movement in China, entitled "Great Change: Research Structure of the strategy for China's Democratization"; these articles appeared in The China Human Rights Biweekly.

26. All of these articles, and Mr. Wang's previous articles, have been banned and censored from the search engine results of BAIDU.COM INC. as agent and enforcer of the anti-democracy policies of THE PEOPLE'S REPUBLIC OF CHINA because of the topic that they deal with – democracy in China.

27. Jian Zhang writes articles about the Chinese democracy movements and covers various events that deal with the democracy movement in China; his articles, publications and video are available throughout the internet and on all internet search engines across the World Wide Web.

28. However, none of his articles are available on BAIDU.COM INC. as BAIDU.COM INC. as agent and enforcer of the anti-democracy policies of THE PEOPLE'S REPUBLIC OF CHINA has censored and blocked the appearance of any of his articles from their search results due to their content; each of the publications and video and audio files deals with the Chinese democracy movement.

29. Liqun Chen publishes articles and covers events that deal with the Chinese democratic movement.

30. Chen's publications can be found throughout the internet, but not on BAIDU.COM INC.'s search engine.

31. BAIDU.COM INC. as agent and enforcer of the anti-democracy policies of THE PEOPLE'S REPUBLIC OF CHINA censors the information based on its content and blocks any of Chen's publications from the results of their search engine because of the content, i.e. the Chinese democracy movement.

32. Shenqi Fu has published articles and created video programs dealing with the Chinese Democracy movement, all of which are available on the internet at various search engines.

33. However, none of her publications or videos are available on BAIDU.COM INC.'s search engine because BAIDU.COM INC. as agent and enforcer of the anti-democracy policies of THE PEOPLE'S REPUBLIC OF CHINA systematically censors and excludes them from the search engine results because of the content of their message i.e. pro-democracy in China.

34. Baidu deliberately censors her publications and videos and blocks them because of their content i.e. the Chinese Democracy movement.

35. Shuyuan Song has published articles and created video programs dealing with the Chinese democracy movement.

36. All of his publications, articles and videos dealing with the Chinese Democracy movement are available on the internet.

37. However, none of them are available on BAIDU.COM INC.'s search engine because BAIDU.COM INC. as agent and enforcer of the anti-democracy policies of THE PEOPLE'S REPUBLIC OF CHINA censors and blocks Song's publications and videos based on their content and does not allow them as part of the search results.

38. Yuhong Zhang publishes articles and creates videos dealing with the Chinese Democracy movement.

39. Her articles are widely published throughout the internet and Yuhong's videos can be found on YouTube as well as other sites on the internet.

40. However, none of his publications or videos can be found in the search results of BAIDU.COM INC.. BAIDU.COM INC. as agent and enforcer of the anti-democracy policies of THE PEOPLE'S REPUBLIC OF CHINA specifically censors and blocks Yuhong's publications and videos from their search results based on their content, i.e. the Chinese Democracy movement.

41. Wa Xue participates in the creation of video programs dealing with the Chinese Democracy movements.

42. The videos are widely available on the World Wide Web for viewing.

43. However, none of the videos are available on BAIDU.COM INC.'s search engine because BAIDU.COM INC. as agent and enforcer of the anti-democracy policies of THE



PEOPLE'S REPUBLIC OF CHINA censors these videos and blocks them from the Baidu.com search engine results because of their content.

44. None of Xue's videos can be found on BAIDU.COM INC.'s search engine results specifically because of their content, i.e. the Chinese Democracy movement.

45. Guang Yang publishes various articles and creates videos dealing with the Chinese Democracy movement.

46. His publications and videos are widely available on the World Wide Web.

47. However, Yang's publications and videos are not available on BAIDU.COM INC.'s search engine because BAIDU.COM INC. as agent and enforcer of the anti-democracy policies of THE PEOPLE'S REPUBLIC OF CHINA censors and blocks them from coming up in Baidu's search engine results specifically because of their content, i.e. the Chinese Democracy movement.

#### FIRST CAUSE OF ACTION

48. Plaintiffs repeat and reallege paragraphs ONE through FORTY SEVEN as set forth in their entirety herein.

49. BAIDU.COM INC. and THE PEOPLE'S REPUBLIC OF CHINA violated 42 U.S.C. §1985(3) Conspiracy to interfere with civil rights when Defendants consistently and systematically conspired to censor and block the publications, articles and other materials from appearing in the search results of BAIDU.COM INC.'s search engine based purely on the content of those articles i.e. the pro-democracy content in violation of Plaintiffs' rights to Freedom of Speech under the First Amendment of the U.S. Constitution.

50. 42 U.S.C. §1985(3) provides:

Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

42 The Public Health and Welfare §1985(3).

SECOND CAUSE OF ACTION

51. Plaintiffs repeat and reallege paragraphs ONE through FORTY SEVEN as set forth in their entirety herein.

52. BAIDU.COM INC. and THE PEOPLE'S REPUBLIC OF CHINA violated 42 U.S.C.S. §1981 when they consistently and systematically denied and interfered with Plaintiffs equal rights under the law when they censored and blocked the publications, articles and other materials of Plaintiffs from appearing in the search results of BAIDU.COM INC.'s search engine based purely on the content of those articles in violation of Plaintiffs' right to Freedom of Speech under the First Amendment of the United States Constitution.

53. Title 42 U.S.C §1981 provides:

(a) Statement of equal rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) "Make and enforce contracts" defined

For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c) Protection against impairment

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

Title 42 The Public Health and Welfare §1981.

### THIRD CAUSE OF ACTION

54. Plaintiffs repeat and reallege paragraphs ONE through FORTY SEVEN as set forth in their entirety herein.

55. BAIDU.COM INC. and THE PEOPLE'S REPUBLIC OF CHINA violated 42 U.S.C.S. §1983 Conspiracy to interfere with civil rights when it censored and blocked the publications, articles and other materials from appearing in the search results of BAIDU.COM INC.'s search engine based purely on the content of those articles in violation of the First Amendment's Freedom of Speech Clause of the U.S. Constitution.

56. 42 U.S.C. §1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not

be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. §1983.

#### FOURTH CAUSE OF ACTION

57. Plaintiffs repeat and reallege paragraphs ONE through FORTY SEVEN as set forth in their entirety herein.

58. BAIDU.COM INC. and THE PEOPLE'S REPUBLIC OF CHINA violated New York Civil Rights Law §40 Equal Rights In Places Of Public Accommodation, when they denied Plaintiffs full and equal accommodations, advantages, facilities and privileges of a place of public accommodation when Defendants directly and indirectly, purposely and consistently, refused and withheld from and denied Plaintiffs accommodations, advantages, facilities and privileges by censoring and blocking the Plaintiffs' articles, publications and other multimedia coverage dealing with pro-democracy events from BAIDU.COM INC.'s search engine results and that such was denied Plaintiffs because of their creed (i.e. Plaintiffs' political belief in democracy and the democratic process for the citizens of China and Plaintiffs' political speech dealing with pro-democracy).

59. New York Civil Rights Law §40 provides:

All persons within the jurisdiction of this state shall be entitled to the full and equal accommodations, advantages, facilities and privileges of any places of public accommodations, resort or amusement, subject only to the conditions and limitations established by law and applicable alike to all persons. No person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any such place shall directly or indirectly refuse, withhold from or deny to any person any of the accommodations, advantages, facilities or privileges thereof, or directly or indirectly publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement, to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from or denied to any

person on account of race, creed, color or national origin, or that the patronage or custom thereat, of any person belonging to or purporting to be of any particular race, creed, color or national origin is unwelcome, objectionable or not acceptable, desired or solicited.

NYS Civil Rights Law §40.

#### FIFTH CAUSE OF ACTION

60. Plaintiffs repeat and reallege paragraphs ONE through FORTY SEVEN as set forth in their entirety herein.

61. BAIDU.COM INC. and THE PEOPLE'S REPUBLIC OF CHINA violated New York Civil Rights Law §40-c when they denied Plaintiffs full and equal accommodations, advantages, facilities and privileges of a place of public accommodation when Defendants directly and indirectly, purposely and consistently, refused and withheld from and denied Plaintiffs accommodations, advantages, facilities and privileges by censoring and blocking the Plaintiffs' articles, publications and other multimedia coverage dealing with pro-democracy events from BAIDU.COM INC.'s search engine results and that such was denied Plaintiffs because of their creed (i.e. Plaintiffs' political belief in democracy and the democratic process for the citizens of China and Plaintiffs' political speech dealing with pro-democracy).

62. New York Civil Rights Law §40-c provides:

1. All persons within the jurisdiction of this state shall be entitled to the equal protection of the laws of this state or any subdivision thereof.
2. No person shall, because of race, creed, color, national origin, sex, marital status, sexual orientation or disability, as such term is defined in section two hundred ninety-two of the executive law, be subjected to any discrimination in his or her civil rights, or to any harassment, as defined in section 240.25 of the penal law, in the exercise thereof, by any other person or by any firm, corporation or institution, or by the state or any agency or subdivision of the state.

NYS Civil Rights Law §40-c.

## SIXTH CAUSE OF ACTION

63. BAIDU.COM INC. and THE PEOPLE'S REPUBLIC OF CHINA violated New York Human Rights Law Executive Law §296(2) when Defendants in an unlawful discriminatory practice as owner of a place of public accommodation unlawfully discriminated against Plaintiffs and did directly and purposely refuse, withhold from and deny to Plaintiffs an accommodation, advantage, facility or privilege of a place of public accommodation when BAIDU.COM INC. as agent and enforcer of the anti-democracy policies of THE PEOPLE'S REPUBLIC OF CHINA censored and blocked from its search engine results the writings, publications and multimedia coverage dealing with pro-democracy events because of Plaintiffs' creed i.e. belief in democracy and the democratic process for the citizens of China and Plaintiffs' political speech dealing with pro-democracy.

64. New York Human Rights Law provides:

2 (a) It shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of **public accommodation**, resort or amusement, because of the...creed... of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the **accommodations**, advantages, facilities or privileges thereof, including the extension of credit, or, directly or indirectly, to publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement, to the effect that any of the **accommodations**, advantages, facilities and privileges of any such place shall be refused, withheld from or denied to any person on account of ...creed... or that the patronage or custom thereof of any person of or purporting to be of any particular ...creed... is unwelcome, objectionable or not acceptable, desired or solicited.

NYS Executive Law §296(2)(a)

## SEVENTH CAUSE OF ACTION

65. Plaintiffs repeat and reallege paragraphs ONE through FORTY SEVEN as set forth in their entirety herein.

66. BAIDU.COM INC. and THE PEOPLE'S REPUBLIC OF CHINA violated New York City Human Rights Law NYC Admin. Code §8-107(4)(a) when Defendants in an unlawful discriminatory practice as owner of a place of public accommodation unlawfully discriminated against Plaintiffs and did directly and purposely refuse, withhold from and deny to Plaintiffs an accommodation, advantage, facility or privilege of a place of public accommodation when BAIDU.COM INC. as agent and enforcer of the anti-democracy policies of THE PEOPLE'S REPUBLIC OF CHINA censored and blocked from its search engine results the writings, publications and multimedia coverage dealing with pro-democracy events because of Plaintiffs' creed i.e. belief in democracy and the democratic process for the citizens of China and Plaintiffs' political speech dealing with pro-democracy.

67. The New York City Human Rights Law provides:

(a) It shall be an unlawful discriminatory practice for an person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of provider of public accommodation because of the actual or perceived...creed... of any person directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof, or, directly or indirectly, to make any declaration, publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement, to the effect that any of the accommodations, advantages, facilities and privileges of any such place or provider shall be refused, withheld from or denied to any person on account of...creed.

NYC Admin. Code §8-107(4)(a)

#### EIGHTH CAUSE OF ACTION

68. Plaintiffs repeat and reallege paragraphs ONE through FORTY SEVEN as set forth in their entirety herein.

69. BAIDU.COM INC. and THE PEOPLE'S REPUBLIC OF CHINA violated The New York State Constitution Article 1 § 11 when Defendants in an unlawful

discriminatory practice as owner of a place of public accommodation unlawfully discriminated against Plaintiffs and did directly and purposely refuse, withhold from and deny to Plaintiffs an accommodation, advantage, facility or privilege of a place of public accommodation when BAIDU.COM INC. as agent and enforcer of the anti-democracy policies of THE PEOPLE'S REPUBLIC OF CHINA censored and blocked from its search engine results the writings, publications and multimedia coverage dealing with pro-democracy events because of Plaintiffs' creed i.e. belief in democracy and the democratic process for the citizens of China and Plaintiffs' political speech dealing with pro-democracy.

70. The New York State Constitution provides:

No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of ...creed or religion, be subjected to any discrimination in his or her civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state.

NYS Const. Article 1 § 11.



ATTORNEYS FEES AND COSTS

71. The Plaintiffs have been obligated to retain undersigned counsel for the filing and prosecution of this action. The Plaintiffs are entitled to have reasonable attorneys fees, costs and expenses paid by the Defendants.

DAMAGES

72. The Plaintiffs each demand the sum of Two Million Dollars (\$2,000,000) totaling damages of Sixteen Million Dollars (\$16,000,000) based on the Defendants' violation of the U.S. Constitution, the New York State Constitution, Title 42 U.S.C. 1981, 1983, 1985, New York State Human Rights Law, New York State Civil Rights Law and New York State Executive Law.

Dated: May 17, 2011

Respectfully submitted,

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