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12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **OAKLAND DIVISION**

15 WANG XIAONING, YU LING, SHI TAO,
and ADDITIONAL PRESENTLY
16 UNNAMED AND TO BE IDENTIFIED
INDIVIDUALS,

17 Plaintiffs,

18 v.

19 YAHOO, INC., a Delaware Corporation,
YAHOO! HOLDINGS (HONG KONG),
LTD., a Foreign Subsidiary of Yahoo!,
20 ALIBABA.COM, INC. a Delaware
Corporation, AND OTHER PRESENTLY
21 UNNAMED AND TO BE IDENTIFIED
INDIVIDUAL EMPLOYEES OF SAID
22 CORPORATIONS,

23 Defendants.

Case No. C07-02151 CW

TORT DAMAGES CLAIM

**PLAINTIFFS' OPPOSITION TO
DEFENDANT YAHOO!, INC.'S MOTION TO
SHORTEN TIME ON ITS MOTION FOR AN
EARLY CASE MANAGEMENT
CONFERENCE AND ORDER**

Judge: Hon. Claudia Wilken

1 Plaintiffs strenuously object both to the Defendants' Motion to Shorten Time for their
2 proposed Motions Hearing, and to the substance of the Motion for an Early Case Management
3 Conference itself. Our detailed objections to the latter Motion will be submitted to the Court by
4 June 28, while our objections to the proposal to shorten time are addressed in the present
5 submission. With respect to the Motion to Shorten Time for the Motions Hearing, our objections
6 are based on the following reasons:

7 **1. Inadequate Time to Prepare Response.** The extremely short time frame proposed, with a
8 court hearing just ten calendar days after the Defendants' Motions were filed, would not provide
9 the Plaintiffs an adequate opportunity to prepare for and to respond appropriately to the numerous
10 significant points and issues raised in the Motions that the Defendants are asking the Court to
11 consider. Major questions have been raised in the Defendants' submissions concerning a variety
12 of jurisdictional issues, as well as a number of more substantive matters including the potential
13 impact of the litigation on U.S. foreign policy interests, how the standards set out by the U.S.
14 Supreme Court in *Sosa v. Alvarez-Machain* (542 U.S. 629 (2004)) apply to this case, whether,
15 and under what circumstances, a company doing business in a foreign nation should comply with
16 requests from the host governments, how to conduct effective fact investigation in a foreign
17 nation that limits access to its citizens and to relevant information, and whether California's
18 SLAPP statute applies to the "communications" between Yahoo and the Government of China.
19 All of these matters involve complicated issues that can not be properly or intelligently addressed
20 by the Parties, or adequately considered and treated by the Court, even for preliminary court
21 scheduling and management purposes, within the ten or eleven day timetable that the Defendants
22 have suggested, and without even the benefit of the Defendants' full responsive pleading to the
23 complaint, which is not due until July 27. The nature of the Motion that the Defendants have
24 submitted, even though preliminary in nature, requires the additional disclosures, exchange of
25 information and discussions that the regular case management process is designed to provide. No
26 court action related to how the management of these issues should be handled before the
27 Defendants' responsive pleading is filed, and before completion of the regular ADR and case
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1 management processes called for under the Court's Rules. These regularly scheduled procedures
2 identify and properly frame the issues so that management decisions regarding them can be made
3 on an informed basis.

4 The extremely short notice for the Defendants' proposed hearing date of July 2 may also
5 pose inconsistencies with Local Rules that seem to require a minimum of ten working or business
6 days for any proposed changes in court hearings or other deadlines. Under Local Rule 6-1(b)
7 regarding "Enlarging or Shortening Time," "any stipulated request or motion which affects a
8 hearing or proceeding" relating to the Court's calendar "must be filed no later than 10 days before
9 the scheduled event." N.D. CAL. CIV. L.R. 6-1(b). According to Local Rule 1(c), the definition
10 and computation of time under the Court Rules applies "the meaning given" under Rule 6(a) of
11 the Federal Rules of Civil Procedure, which specifies that "When the defined time period is less
12 than 11 days, intermediate Saturdays, Sundays, and legal holidays are not counted" (FED. R. CIV.
13 P. 6(a)), which means that ten business days, not ten calendar days, must be provided, which
14 would not be the case for a July 2 hearing date.

15 Though it is not clear whether the term "scheduled event" in Rule 6-1(b) refers to the prior
16 deadline, the newly proposed date, or both, other elements of the Court Rules suggest that the ten
17 working day minimum should apply. Local Rule 7-7, which allows for a continuance for a
18 hearing, requires that the motion be made more than twenty-one days prior to a scheduled
19 hearing. *See* N.D. CAL. CIV. L.R. 7-7(a)(2), 7-3(a). It would be inconsistent to require twenty-one
20 days notice for a continuance but less than ten business days notice to expedite a hearing. Local
21 Rule 16-10(d) provides that prior to a Subsequent Case Management Conference, the parties must
22 file a Joint Case Management Statement no fewer than ten days before the conference. N.D. CAL.
23 CIV. L.R. 16-1(D). Thus, a motion to shorten time for a subsequent Case Management Conference
24 would certainly be due more than ten days before the proposed date.

25 In addition, if the Defendants' proposed hearing date of July 2 were adopted, the hearing
26 would occur before the Plaintiffs' response to the Motion for an Early Case Management
27 Conference setting that date would be due. *See* N.D. CAL. CIV. L.R. 7-2(a), 7-3(a). These
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1 inconsistencies with the Rules indicate that the timeframe proposed in the Motion to Shorten
2 Time would not comply with the Court's established procedures. Moreover, Defendants' request
3 would not provide Plaintiffs a reasonable time to respond, instead compelling them to respond
4 significantly earlier than would be required under the existing framework and therefore should
5 not be accepted.

6 **2. Inconsistencies With Prior Schedule Changes.** The proposed additional early case
7 management conference, and the shortened time schedule associated with it, is not consistent with
8 the schedule for ADR and case management activities, and the resetting of the Initial Case
9 Management Conference for September 18, that the Defendants requested from the Plaintiffs and
10 from the Court just a few days ago, and that was ordered by the Court on June 19. It is highly
11 unusual for a court to bypass its regular case management system, especially when the Parties and
12 the Court have just adopted adjustments in the timetable for that system to meet the needs of the
13 Parties, and most specifically the vacation and travel plans of the Defendants' attorneys. (See
14 attached Declaration.) The Defendants have not provided adequate justification why such an
15 unusual approach, and a second major alteration in the timetable that they have just agreed to, is
16 necessary in this case. If the Defendants wanted to change the Initial Case Management
17 Conference schedule along the lines of their most recent set of Motions, they should have
18 incorporated those changes in the Joint Stipulation that they solicited from the Plaintiffs and
19 submitted to the Court only days before making this new request. Defendants are styling their
20 Motion as a request for an early case management conference. In actuality it is really a
21 rescheduling of the Initial Case Management Conference that the Defendants, on their initiative
22 and based on their vacation and travel plan needs, already obtained agreement from the Plaintiffs
23 and the Court to reschedule for September 18.

24 **3. Misleading Nature of the Defendants' Representations.** To obtain the Plaintiffs' consent to
25 the delayed time schedule that they previously proposed and obtained by the Court's Order of
26 June 19, the Defendants' represented that the originally set date for the initial case management
27 conference of August 7 (and corresponding earlier deadlines for preparatory case management
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1 activities), would interfere with the vacation plans during the first three weeks of July of one of
2 their primary counsel (Daniel Petrocelli), and would not permit the other primary counsel (Joseph
3 Cyr) an adequate opportunity for a planned fact-finding trip to Hong Kong and China to evaluate
4 the corporate connections between his client (Alibaba) and other affected entities. Yet Defendants
5 are now seeking a second change in scheduling to make possible a July 2 hearing before the Court
6 to consider many of the issues that they indicated they would not be prepared to deal with under
7 the initial court-ordered schedule. It is hard to understand what changed in the few days between
8 the Defendants' urgent efforts to secure a delay the regular case management schedule, and their
9 current effort to obtain an earlier hearing without the benefit of the case management process
10 taking place. It is also very hard to understand or to explain why the original schedule changes
11 were deemed necessary to prevent a conflict with Mr. Petrocelli's vacation plans, while
12 Defendants acknowledged in an email communication with the Plaintiffs' counsel that "slight
13 adjustments" to these plans are now being made to allow for the July 2 hearing date. (See
14 attached Declaration.)

15 **4. The Regular Case Management Process Is Needed Before the Court Can Decide How**
16 **Best to Proceed.** The issues and concerns raised by the Defendants are not appropriate subjects
17 for presentation to the Court without the Parties being given an opportunity to discuss and deal
18 with them through the regular ADR and case management process. Many of the Defendants'
19 issues and objections, in order to properly be evaluated by the Parties and by the Court, require
20 exactly the type of initial pre-trial discovery, fact sharing and communication that is required by
21 the case management process. It would be premature to bring these matters before the Court, even
22 for scheduling or case management decision making, in the form of simple pleadings without the
23 benefit of the factual information that is required to understand them and to give them proper and
24 meaningful consideration. The nature and scope of the responsibility of Yahoo! US and Yahoo
25 Hong Kong for the activities of their Yahoo China affiliate provide a case in point. Without more
26 detailed information about the corporate relationships and interactions of these entities,
27 information that can only be obtained through initial information sharing pursuant to the regular
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1 case management process, no realistic assessment of the degree of their involvement with, and
2 responsibility for, actions of their affiliates taking place in China can be made. Defendants appear
3 to be seeking to sidestep the case management and initial discovery and information sharing
4 processes in the hopes of obtaining expedited decisions from the Court that will either limit their
5 liability, or will allow for major delays in the litigation process so as to prevent any timely
6 determination of liability.

7 The regularly scheduled Initial Case Management Conference with the Court, now set for
8 September 18 by Joint Stipulation, is the more appropriate and logical means for dealing with
9 issues and concerns that the Defendants are seeking to raise, than through the earlier hearing that
10 they are requesting. Defendants would be unnecessarily wasting the time and resources of the
11 Court, and improperly delaying these court proceedings, by moving the initial case management
12 conference to before the regular case management processes can take place. An alteration and
13 sidestepping of that process, particularly in light of the detailed changes in the timetable for that
14 process that have just been made at Defendants' behest, is not justified or appropriate.

15 Based on the above, the Defendants' Motion to Shorten Time should be denied in its
16 entirety. (See attached Proposed Order.) Plaintiffs will address the merits and substance of the
17 Defendants' Motion for An Early Case Management Conference in a subsequent submission to
18 the Court on or about June 28, in order to make certain, in the exercise of caution, that those
19 views are before the Court should a July 2 Motions Hearing date be set.
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Respectfully submitted this 25th day of June, 2007,

MORTON SKLAR
THERESA HARRIS
WORLD ORGANIZATION FOR HUMAN
RIGHTS USA

By: /s/ Morton Sklar

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CERTIFICATE OF COMPLIANCE

This Opposition on behalf of the Plaintiffs to the Defendants' Motion to Shorten Time in the above captioned case complies with all Federal and Local Rule requirements, including the page limit of five pages for the narrative text set out in Rule 6-3(c). It is written in 12 point Times New Roman font and contains a total of 1,820 words.

Signed and Certified to this 25th day of June, 2007.

By: /s/ Morton Sklar
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