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17 *Attorneys for Plaintiff Mr. Ning Xianhua*

18
 19 **UNITED STATES DISTRICT COURT**
 20 **NORTHERN DISTRICT OF CALIFORNIA**
 21 **SAN JOSE DIVISION**

22 NING XIANHUA, an individual

23 Plaintiff,

24 v.

25 OATH HOLDINGS, INC., f/k/a YAHOO! INC.
 and as successor in interest to YAHOO! INC.;
 26 ALTABA INC., f/k/a YAHOO! INC. and as
 successor in interest to YAHOO! INC; TERRY
 SEMEL, an individual; and JERRY YANG, an
 27 individual, and DOES 1-10

28 Defendants.

Case No.: _____

ORIGINAL COMPLAINT

JURY TRIAL DEMANDED

- (1) ALIEN TORT STATUTE
- (2) TORTURE VICTIM PROTECTION ACT
- (3) UNFAIR COMPETITION (UCL)

1 Plaintiff NING XIANHUA (**Mr. Ning**), by and through his undersigned attorneys,
2 complains and alleges the following:

3 **INTRODUCTION**

4 1. In May of 1989, hundreds of thousands of Chinese students and workers gathered at
5 Beijing's Tiananmen Square to protest peacefully in favor of democracy and improved conditions
6 for China's working class. On June 4, 1989, China's communist regime ordered the Chinese
7 military to remove the protesters from Tiananmen Square and to execute or arrest those who
8 refused. The military violently removed the protesters, killing thousands of them in the process by
9 firing on them with assault rifles and running over them with armored vehicles.

10 2. Since the Tiananmen Square massacre, the Chinese communist regime has imposed
11 tight censorship policies throughout the country. China's communist regime has virtually erased the
12 massacre from China's history along with the pro-democracy sentiment expressed by those brave
13 protesters in 1989. However, Plaintiff Ning Xianhua and other Chinese nationals would not idly
14 stand by. Risking their lives, they continued to serve as voices of the oppressed and mistreated.
15 They resisted China's totalitarian communist regime. They fought for democracy and working-class
16 rights. And they honored those who were murdered at Tiananmen Square by the Chinese
17 communist regime.

18 3. With the entry of Yahoo!'s internet search engine and electronic mail service into
19 China, pro-democracy "dissidents" like Mr. Ning believed they would have improved access to
20 information and to an email service that provided for discrete, confidential communications. They
21 believed the "gateway to the internet" provided by Yahoo! would stimulate the call for democracy
22 and fairness, preserve the memory of those who died on June 4, 1989, and allow all of this to be
23 done while protecting their identities from Chinese communist authorities.

24 4. But Mr. Ning and other pro-democracy activists did not know that Yahoo! Inc., its
25 founder, Jerry Yang, and its CEO, Terry Semel, had secretly agreed to serve as an extension of
26 China's communist regime by helping identify and imprison political dissidents like Mr. Ning. In
27 exchange for access to the wealth they would gain from providing internet products to 110 million
28 Chinese internet users, Yahoo! Inc., Yang, and Semel agreed to share confidential information and

1 communications of Yahoo! customers with Chinese communist officials in a joint effort to silence
2 pro-democracy dissidents through arbitrary arrest, imprisonment, torture, and in some cases death.
3 Pursuant to this agreement, the totalitarian communist regime received direct assistance from
4 Defendants in their Sunnyvale, California headquarters to silence pro-democracy messages by
5 punishing those who dared to utter them. The internet “gateway” touted by the Yahoo! Defendants
6 became a snare, wielded by the Yahoo! Defendants to further the Chinese regime’s repression of
7 pro-democracy advocates.¹

8 5. Mr. Ning used his Yahoo! email account to privately spread pro-democracy
9 messages and publications, coordinating with other activists through communications he believed to
10 be secure. But pursuant to the agreement among Yahoo! Inc., Yang, Semel, and the Chinese
11 communist regime, Yahoo! employees and agents turned over Mr. Ning’s private information to the
12 Chinese authorities. Based on that information, Mr. Ning was arrested and convicted for promoting
13 democracy, and he suffered brutal beatings and torture for years.

14 6. Mr. Ning finally escaped China’s oppressive communist regime by seeking asylum
15 in the United States. He subsequently learned that Yahoo! Inc., Terry Semel, Jerry Yang, and others
16 presently unknown at Yahoo! are responsible for his arrest, torture, and resulting injuries. Mr. Ning
17 is informed and believes, and thereupon alleges, that at all times relevant hereto Does 1 to 10, in
18 addition to the named Defendants, are responsible in some manner for the conduct, damages, and
19 injuries alleged herein. He seeks justice for the Yahoo! Defendants’ complicity in the human rights
20 violations he suffered at the hands of the Chinese regime because of their reprehensible conduct.

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27 ¹ In this Complaint, the corporate defendants are referred to as “Yahoo!,” and all defendants are referred to collectively
28 as the “Yahoo! Defendants.” The Doe defendants (Does 1-10), whose identities are presently unknown are entities,
officials or individuals within or affiliated with the Yahoo! Defendants and are in some way responsible for the
violations and injuries to Mr. Ning alleged herein. Plaintiff will identify and serve such Doe Defendants as soon as their
identities and the facts relevant to their responsibility are known.

PARTIES

1
2 7. Plaintiff Ning Xianhua is a Chinese national who resides in New York. Mr. Ning
3 fled to the United States as a result of the conduct alleged in this Complaint and fear of further
4 reprisals from the Chinese communist regime.

5 8. Defendant Oath Holdings, Inc. is a Verizon company. Oath Holdings, Inc., formerly
6 known as Yahoo! Inc. and Yahoo! Holdings, Inc.—and successor in interest to the same—is a
7 Delaware corporation that maintains its headquarters in Sunnyvale, California. Yahoo! Inc. sold its
8 operating business, including those operations and liabilities at issue here, to Yahoo! Holdings, Inc.
9 on June 13, 2017. Yahoo! Holdings Inc. then changed its name to Oath Holdings, Inc. on January 1,
10 2018. Pursuant to these transactions, and under applicable law, Defendant Oath Holdings, Inc. is
11 liable for the damages alleged herein.

12 9. Defendant Altaba, Inc., formerly known as Yahoo! Inc. and successor in interest to
13 the same, is a Delaware corporation that maintains its primary offices in San Francisco, California,
14 and New York, New York. After the transfer of Yahoo! Inc.’s operating business to Oath Holdings,
15 Inc., Yahoo! Inc. changed its name to Altaba, Inc. On information and belief, Yahoo! Inc.—now
16 Defendant Altaba, Inc.—retained liability for the damages alleged herein in its transactions with
17 Oath Holdings, Inc. Pursuant to these transactions, and under applicable law, Defendant Altaba Inc.
18 is also liable for the damages alleged herein.

19 10. Defendant Jerry Yang founded Yahoo! Inc. and, during the relevant time period,
20 controlled Yahoo! Inc. and its subsidiaries as owner, CEO, and in his self-described role of “Chief
21 Yahoo.” Yang resides in Los Altos Hills, Santa Clara County, California. Defendant Yang sought to
22 secure the legacy and wealth that would result from Yahoo! Inc.’s—and its wholly-owned
23 subsidiaries’—entry into the fledgling Chinese internet market. Prior to his guiding Yahoo!’s
24 business into the Chinese market, Defendant Yang knew the Chinese government utilized a
25 campaign of arbitrary arrest and torture to silence political dissenters. Defendant Yang knew that he
26 could obtain personal wealth from his companies’ activities in the Chinese market only if he
27 committed the Yahoo! companies to helping the Chinese government silence political dissenters
28 who used Yahoo! internet products to receive and disseminate pro-democracy, anti-communism

1 messages. Thus, Defendant Yang's desire to profit from the Chinese market and the People's
2 Republic of China's (**PRC**) desire to silence pro-democracy political speech led to a marriage of
3 ongoing repression fueled by the Yahoo! Defendants' secret ongoing cooperation with the Chinese
4 regime. This agreement went above and beyond ordinary business dealings and committed the
5 Yahoo! companies to knowingly assist in violating the human rights of Chinese freedom advocates
6 for Defendant Yang's personal profit. Without Defendant Yang's commitment to helping PRC
7 officials in their campaign of suppression and violence against political dissenters, Defendant Yang
8 and his Yahoo! companies would be excluded from the Chinese market and lose access to the
9 wealth produced from that market. Because Defendant Yang could not profit from the Chinese
10 market without helping the PRC arrest and torture dissidents, Defendant Yang agreed to help the
11 PRC's communist regime commit those grave harms. Defendant Yang made this Faustian bargain
12 knowing his profits would be earned at the expense of unsuspecting freedom advocates like Mr.
13 Ning.

14 11. During much of the relevant time period, Defendant Terry Semel served as Yahoo!
15 Inc.'s CEO and chairman of Yahoo! Inc.'s board of directors. Semel resides in Woodland Hills, Los
16 Angeles County, California. Like Defendant Yang, Defendant Semel sought to secure the legacy
17 and wealth that would result from Yahoo! Inc.'s—and its wholly-owned subsidiaries'—entry into
18 the Chinese internet market. Defendant Semel knew prior to entering the market that the Chinese
19 government utilized arbitrary arrest and torture to silence political dissenters, and that he could
20 obtain personal wealth from the Chinese market only if he committed the Yahoo! companies to
21 helping the Chinese government in its campaign of censorship and torture. Thus, Defendant Semel's
22 desire to profit from the Chinese market and the PRC's desire to silence pro-democracy political
23 speech joined as unified intentions. This agreement went above and beyond ordinary business
24 dealings and committed the Yahoo! companies to assist in violating human rights for Defendant
25 Semel's personal profit. Without Defendant Semel's commitment to helping PRC officials commit
26 violence against political dissenters, Defendant Semel and his Yahoo! companies would be
27 excluded from the Chinese market and lose access to the wealth produced from that market.

28

1 Defendant Semel made the same Faustian bargain with the repressive Chinese regime knowing that
2 his profits would be earned at the expense of freedom advocates like Mr. Ning.

3 12. Under the various agreements, bylaws, and norms governing Yahoo! Inc.'s corporate
4 governance and structure—and relevant law—Defendants Yang and Semel possessed broad
5 authority over Yahoo! Inc. and its wholly-owned subsidiaries in Hong Kong and China from their
6 positions in California. Under the various agreements, bylaws, and norms governing Yahoo! Inc.'s
7 relationships with its wholly-owned subsidiaries in Hong Kong and China, Yahoo! Inc. retained and
8 exercised vertical control of the day-to-day operations of those subsidiaries and those subsidiaries'
9 agents and employees from Yahoo! Inc.'s position in Sunnyvale, California. In other words, to any
10 extent Yahoo! Inc.'s subsidiaries carried out any misconduct supporting Mr. Ning's claims, those
11 subsidiaries acted pursuant to direct instructions from Yahoo! Inc., Yang, and Semel. Defendants
12 Yang and Semel exercised complete control over the sensitive relationship between the Yahoo!
13 Defendants and the Chinese regime. This control extended to the secret provision of confidential
14 information about Chinese freedom advocates from Yahoo!'s files and records to the Chinese
15 regime.

16 13. Mr. Ning anticipates that, in an effort to avoid personal liability, the Yahoo!
17 Defendants will argue that employees and agents of Yahoo! Inc. and its wholly-owned subsidiaries
18 actually disclosed Mr. Ning's private information to the PRC communist regime. Notwithstanding
19 any such allegations or evidence supporting those allegations, the Yahoo! Defendants remain liable
20 under applicable agency and ratification principles.

21 14. The authority possessed by the Yahoo! Defendants through the corporate governance
22 agreements in place within Yahoo! included without limitation authority to order the disclosure to
23 PRC officials Yahoo! customers' private email communications, names, addresses, user IDs, and
24 data showing their whereabouts when they accessed their Yahoo! accounts (**Protected**
25 **Information**). Defendants Yang and Semel, individually and as the chief decision-makers for
26 Yahoo! Inc., instructed Yahoo! Inc. employees and agents, Yahoo! Inc.'s subsidiaries in Hong
27 Kong and China, and the agents and employees of Yahoo! Inc.'s subsidiaries in Hong Kong and
28 China (collectively **Agents**) to comply with any request for information from PRC authorities

1 regarding a Chinese national in China. Alternatively, because Defendants Yang and Semel,
2 individually and as the chief decision-makers for Yahoo! Inc., allowed their Agents to disclose
3 Protected Information without objection—and encouraged such disclosures—those Agents
4 reasonably believed they had authority to do so on behalf of Yahoo! Inc. and its subsidiaries.

5 15. The Yahoo! Defendants thus instructed their Agents to disclose the Protected
6 Information of Chinese political dissidents—including Mr. Ning—to PRC authorities upon request.
7 The Yahoo! Defendants instructed their Agents to effect such disclosure without warning Mr. Ning
8 or other Chinese Yahoo! customers that they would do so or had done so. Indeed, the Yahoo!
9 Defendants instructed their Agents to conceal all information relating to such disclosures from
10 Chinese Yahoo! customers, including Mr. Ning. The Agents carried out these instructions with
11 respect to Mr. Ning’s Protected Information as well the Protected Information of other political
12 dissidents in China. The Yahoo! Defendants knew about their Agents’ actions and approved them.

13 16. Based on the Yahoo! Defendants’ actual authority to issue these instructions, and
14 according to those specific instructions, (1) Mr. Ning’s Protected Information was disclosed to the
15 PRC communist regime; (2) Mr. Ning was purposefully kept unaware that the Yahoo! Defendants
16 or their Agents would disclose or had disclosed his Protected Information; and (3) Mr. Ning could
17 not have detected the Yahoo! Defendants’ role in his arrest, imprisonment, and torture until
18 recently.

19 17. Even if such individual disclosures were not expressly authorized by the Yahoo!
20 Defendants, the Yahoo! Defendants ratified the policy which encouraged those disclosures, and the
21 relevant Yahoo! Agents in China and Hong Kong reported directly to their counterparts in Yahoo!
22 Inc.’s California headquarters. The Yahoo! Defendants faced public scrutiny regarding the
23 disclosure of political dissidents’ Protected Information to PRC officers because the PRC
24 communist regime silenced those dissidents with torture, murder, and lengthy prison sentences. And
25 each time the Yahoo! Defendants fielded criticism regarding these disclosures, they defended their
26 own actions as well as the actions of Yahoo! subsidiaries, Agents, and employees in California and
27 China who may have acted in connection with these disclosures. In essence, the Yahoo! Defendants
28 defended the acts of their Agents by stating, “They were just doing their jobs.” Thus, not only did

1 the Yahoo! Defendants fail to discourage such disclosures by their Agents, they openly justified
2 them while fully understanding the extent and consequences of those disclosures.

3
4 **JURISDICTION AND VENUE**

5 18. This Court has subject matter jurisdiction because this is a civil action arising under
6 the laws of the United States. *See* 28 U.S.C. § 1331. Specifically, the Court may exercise federal
7 question jurisdiction over Plaintiff's claims under the Alien Tort Statute (ATS), 28 U.S.C. § 1350
8 and Torture Victim Protection Act (TVPA), 28 U.S.C. § 1350 note.

9 19. This Court has subject matter jurisdiction because this is a civil action by an alien for
10 a tort committed in violation of the law of nations or a treaty of the United States. *See* 28 U.S.C. §
11 1350.

12 20. This Court has subject matter jurisdiction because this is a civil action in which the
13 matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is
14 between citizens and legal residents of different states. 28 U.S.C. § 1332.

15 21. This Court has supplemental subject matter jurisdiction over Mr. Ning's state law
16 claims under 28 U.S.C. § 1367. The Court has federal-question jurisdiction, and Plaintiff's state law
17 claims are so related to Plaintiff's federal law claims that they form part of the same case or
18 controversy.

19 22. This Court may exercise personal jurisdiction over the Yahoo! Defendants under
20 California's long-arm statute, which is coextensive with federal constitutional due process limits.
21 *See* Cal. Civ. Proc. Code § 410.10. Defendants Yang and Semel reside in California, and
22 Defendants Oath Holdings, LLC and Altaba Inc. maintain a headquarters or primary office in
23 California. Moreover, as set forth herein, this action arises from and is related to all Defendants'
24 actions within the state of California.

25 23. Venue is proper in this district because Defendant Yang resides here and because
26 Defendants Oath Holdings, LLC and Altaba Inc. maintain a headquarters or primary office within
27 the district. *See* 28 U.S.C. § 1391(b)(1), (c)(2), and (d).

28

1 28. The Yahoo! Defendants actively helped the PRC's communist regime identify Mr.
2 Ning and other Chinese Yahoo! customers as pro-democracy dissidents. In an effort to maximize
3 profits from the 110 million internet users in the Chinese market, the Yahoo! Defendants entered a
4 joint venture with the PRC, pursuant to which the Yahoo! Defendants agreed to help identify
5 Chinese nationals who expressed pro-democracy, anti-CCP ideas over the internet. This agreement
6 went beyond the ordinary business dealings needed for a company like Yahoo! Inc. to establish a
7 foreign presence given, among other things, other internet companies entered the Chinese market
8 without entering and honoring a similar agreement. With the benefit of effective, active assistance
9 from the Yahoo! Defendants in California, the PRC arbitrarily arrested, imprisoned, and tortured
10 numerous pro-democracy dissidents.

11 29. Mr. Ning was a pro-democracy dissident targeted by the PRC and the Yahoo!
12 Defendants. Mr. Ning was and remains a vocal pro-democracy advocate who privately and
13 discretely disseminated pro-democracy, anti-communism messages and writings using his Yahoo!
14 email account. The Yahoo! Defendants and PRC worked together to silence and punish Mr. Ning.
15 Pursuant to their agreement and partnership with the PRC, the Yahoo! Defendants provided the
16 PRC with Mr. Ning's (and others') private email records, copies of email messages, email
17 addresses, user ID numbers, and other identifying information about Mr. Ning and his pro-
18 democracy writings and communications. By this conduct, the Yahoo! Defendants knowingly and
19 intentionally assisted the PRC in its arbitrary arrest, conviction, imprisonment, and torture of Mr.
20 Ning. As a result of the Yahoo! Defendants' misconduct—and consistent with the Yahoo!
21 Defendants' intent and goals of their partnership with the Chinese communist regime—Mr. Ning's
22 pro-democracy messages were silenced, and Mr. Ning suffered permanent and irreversible physical,
23 psychological, and economic injuries.

24 **I. MR. NING BRAVELY ADVOCATED FOR DEMOCRACY AND WORKERS' RIGHTS IN CHINA.**

25 30. Mr. Ning's resistance against China's communist regime grew from his and his
26 family's personal suffering. Mr. Ning and his four siblings grew up in Shenyang, and their family
27 barely survived on his father's wages. Because his family lacked elevated status in China's
28 communist regime, Mr. Ning's family—despite the hard work of his father—barely scraped by

1 financially and lived in squalor. Most other working-class families in Shenyang suffered through
2 similar circumstances for the same reason.

3 31. As a seven-year-old boy, Mr. Ning first personally witnessed the darkness of
4 communism. A PRC communist officer came to Mr. Ning's family home and ordered Mr. Ning's
5 sister to provide manual labor on farms outside of Shenyang. For three years, she labored on local
6 farms—not allowed to visit home. Six years later, a PRC official similarly ripped Mr. Ning's
7 brother from the family home, forcing him to provide three years of unpaid labor on local farms. At
8 the time, communist propaganda often repeated the mantra, "If just one member of the family is
9 sent to the countryside for labor, the whole family gets the glory." Referring to that mantra, a
10 thirteen-year-old Mr. Ning told the officer taking his brother: "No, when one member of the family
11 goes to the countryside—like my sister and now my brother—everyone has *worry*, not glory." Two
12 years following that encounter, authorities ordered a third sibling, Mr. Ning's second sister, to
13 provide three years of unpaid manual labor.

14 32. Witnessing the communist regime commit his siblings to slave labor and observing
15 his father's struggle to survive in a system that allowed only the communist elite to thrive, Mr.
16 Ning—as a child—developed disdain for communism. As an adult, he pushed back. Mr. Ning
17 devoted his life to reporting on the injustice perpetuated by the communist regime and advocating
18 for democracy in China.

19 33. Mr. Ning began advocating for democracy and workers' rights as a young man in his
20 hometown of Shenyang. He organized a Shenyang City Citizens Support Group consisting of local
21 friends and neighbors who shared a disdain for the communist regime and sought to curb its abuses.
22 Because Mr. Ning's friends and neighbors trusted and respected him, they elected him chairman of
23 their newly-established Shenyang Patriotic Citizens Autonomous Union (**PCAU**). The PCAU
24 provided people of Shenyang a platform from which to challenge the CCP's oppressive labor
25 policies.

26 34. In May 1989, Mr. Ning and his friends traveled from Shenyang to Beijing to join the
27 historic pro-democracy, pro-human rights protests at Tiananmen Square. Leaders of other anti-
28 communism unions from communities across China joined Mr. Ning at Tiananmen Square. Those

1 leaders formed the Beijing Autonomous Workers' Federation, a pro-democracy organization that
2 courageously communicated their views to the CCP.

3 35. Hundreds of thousands of protestors participated in the Tiananmen Square
4 demonstrations. Even members of the military and law enforcement joined the protest against
5 totalitarian control and in support of democracy. But the PRC communist regime, led by the CCP,
6 eventually imposed martial law to quell the protests and remove the protesters. The military
7 evacuated the protesters by firing on them and driving through and over them with armored
8 vehicles. What began as a peaceful protest at Tiananmen Square ended in the murder of thousands
9 of protesters by the communist regime.

10 36. Up until this point, Mr. Ning had been open and vocal about his disdain for the
11 policies of the PRC's communist regime. But after the PRC's violent response to and mass arrest of
12 Tiananmen Square protesters, Mr. Ning began promoting democracy and working-class rights in a
13 manner that could not be detected by the communist regime.

14 37. Mr. Ning took every step he could to prevent the Chinese government from
15 obtaining his confidential correspondence. In order to confidentially express his political opinions
16 and avoid detection by the PRC, Mr. Ning sent and received pro-democracy communications using
17 his Yahoo! email account. Mr. Ning kept his Yahoo! account secure with a password. He also
18 encrypted the materials he sent from his Yahoo! account. Mr. Ning knew that the communist
19 regime's discovery of his communications could result in arbitrary detention, arrest, imprisonment,
20 and illegal torture by PRC officials. He thought that through Yahoo!'s services, he could fight for
21 democracy while protecting his identity from PRC officials. Mr. Ning did not know that Defendants
22 had agreed to provide and did provide the communist Chinese regime with his confidential
23 communications and other Protected Information.

24 **II. PURSUANT TO THEIR AGREEMENT WITH THE PRC—AND IN ORDER TO MAXIMIZE PROFITS—**
25 **THE YAHOO! DEFENDANTS HELPED CHINA'S COMMUNIST REGIME IDENTIFY AND CAPTURE MR.**
26 **NING.**

27 38. It has long been widely known that freedom advocates in China are subject to some
28 of the most inhumane interrogation techniques and human rights abuses, including torture. It is well

1 known that PRC officials punish political dissidents for expressing pro-democracy ideas through
2 arbitrary arrest, brutal beatings, starvation, hard labor, and use of torture devices such as the “Tiger
3 Chair” or “Iron Chair.” PRC officials often identify political dissidents through surveillance or
4 hacking measures. The Yahoo! Defendants’ ongoing secret cooperation and agreement with the
5 Chinese communist regime greatly facilitated the regime’s identification, detention, and repression
6 of Chinese pro-democracy freedom advocates.

7 39. The Yahoo! Defendants knew of the PRC’s human rights abuses before entering the
8 Chinese market. They nevertheless agreed to help the PRC communist regime capture and torture
9 political dissidents. Indeed, each of the Yahoo! Defendants received letters and had access to
10 publications—long before Mr. Ning’s arrest—warning them that assisting the PRC communist
11 regime would result in the arbitrary arrest, imprisonment, and torture of innocent Chinese people
12 merely for exercising their right to free speech and assembly under Chinese and international law.
13 Those letters and publications came from non-governmental organizations including Human Rights
14 Watch and Amnesty International. The Yahoo! Defendants were well aware of the cost that came
15 with entering the Chinese market, but still chose to actively commit Yahoo! resources to supporting
16 the regime’s suppression campaign.

17 40. Yahoo! Inc. was the first major American internet company to enter the Chinese
18 market. The Yahoo! Defendants stood to gain billions of dollars in assets and business opportunities
19 by virtue of their Chinese operations. Prior to entering the Chinese market, the Yahoo! Defendants
20 knew that PRC communist officials falsely imprisoned and illegally tortured political dissidents.
21 Other American internet platforms either previously declined to enter the Chinese market or
22 withdrew from it due to its precarious human rights and cybersecurity environment. If Yahoo! Inc.,
23 Terry Semel, and Jerry Yang did not agree to help the PRC locate and imprison political dissidents
24 using Yahoo! internet products, the PRC would block the Yahoo! Defendants’ access to the Chinese
25 market. The Yahoo! Defendants chose to take advantage of the scruples of their competitors to gain
26 a business advantage in the Chinese market by secretly agreeing to help the PRC identify political
27 dissidents active on Yahoo! internet platforms. The Yahoo! Defendants chose profits over principle
28 and morality in agreeing to facilitate the regime’s campaign of repression.

1 41. Defendants' decisions to provide the Chinese government confidential
2 communications by pro-democracy activists like Mr. Ning were made and their implementation
3 closely controlled and directed by Defendants Yang and Semel and the Yahoo managers they
4 directed from Yahoo!'s California headquarters. The Yahoo! Defendants maintained vertical control
5 over their Chinese subsidiaries throughout the relevant time period, such that responding to a
6 request for information like the one in Mr. Ning's case would have been reviewed by the Yahoo!
7 Defendants or their Agents.

8 42. Thus, prior to entering the Chinese market, the Yahoo! Defendants—from
9 Sunnyvale, California—agreed to help the PRC apprehend and torture Chinese pro-democracy
10 dissidents in exchange for access to the Chinese internet market. And once Yahoo! entered the
11 Chinese market, the Yahoo! Defendants fully performed their duties under that agreement. Through
12 this agreement with the Yahoo! Defendants, the PRC's violent communist regime effectively had
13 censorship enforcers operating in Sunnyvale, California. From their California headquarters, the
14 Yahoo! Defendants ordered and oversaw the disclosure of Yahoo! customers' personal information
15 to the PRC. That information included without limitation pro-democracy email exchanges between
16 Mr. Ning and a resident of San Francisco, California, using a Yahoo! account. The Yahoo!
17 Defendants did this as part of a joint effort to eliminate pro-democracy messages within China,
18 leaving China, and entering China.

19 43. The Yahoo! Defendants actively concealed their complicity with the PRC
20 communist regime in their actions and omissions taken or directed from Yahoo!'s California
21 headquarters, including concealing their activities from investors and the U.S. government.
22 Although the Yahoo! Defendants have since publicly confessed to helping imprison some Chinese
23 political dissidents, they have continued to conceal their assistance to the Chinese communist
24 regime in imprisoning and torturing Mr. Ning.

25 44. With respect to Mr. Ning, Yahoo! employees and Agents received a request from
26 PRC authorities asking for private information relating to Mr. Ning's Yahoo! email account,
27 including Protected Information such as Mr. Ning's identity, telephone number, physical address,
28 private emails, and the dates, times, and IP addresses from which Mr. Ning accessed his Yahoo!

1 email account. The Yahoo! Defendants learned of the request at their California headquarters.
2 Defendants knew that the Chinese communist regime was seeking Mr. Ning's confidential
3 communications in order to detain, imprison, torture, and potentially execute him. Defendants knew
4 that Mr. Ning could be subject to the death penalty for the peaceful expression of dissenting views
5 and, yet, Defendants were willing to let Mr. Ning suffer these violations in order to maintain their
6 profits. Charges such as "subversion of state power" levied at Mr. Ning were transparent attempts to
7 mask the PRC's suppression of pro-democracy rhetoric by subjecting him to arbitrary arrest and
8 imprisonment, cruel and unusual punishment, outright torture, interrogation techniques outlawed by
9 international treaties, and forced labor.

10 45. Knowing full well the abuse Mr. Ning and other political dissidents would endure if
11 the PRC possessed their private Yahoo! messages and information, the Yahoo! Defendants—from
12 Yahoo! Inc.'s California headquarters—ordered or approved the release of Mr. Ning's and other
13 dissidents' private and highly sensitive pro-democracy communications and other Protected
14 Information to PRC authorities. Mr. Ning's Protected Information, electronically stored on his
15 secure Yahoo! account, was provided to the PRC communist regime pursuant to the secret
16 agreement between the Yahoo! Defendants and the PRC formed at Yahoo!'s California
17 headquarters.

18 46. The Yahoo! Defendants knew the PRC authorities would arbitrarily arrest and torture
19 Mr. Ning once they released his Protected Information to the government. They knew this because
20 the Yahoo! Defendants had turned over private emails of other pro-democracy dissidents in the past
21 to the PRC, and they knew that those dissidents had been arbitrarily arrested, convicted without
22 even knowing the evidence upon which their convictions relied, and tortured just as Mr. Ning would
23 be. The Yahoo! Defendants knew how valuable political dissidents' private information was, as
24 PRC officials would often use communications like Mr. Ning's to locate, arrest and imprison
25 dissidents. They knew that turning over this valuable information was their gateway into the
26 Chinese market. Thus, pursuant to their partnership and agreement with the PRC, and in an effort to
27 preserve their financial interest in the Chinese internet market, the Yahoo! Defendants continued to
28 assist the PRC in its efforts to punish pro-democracy dissidents.

1 47. Enabled by the Yahoo! Defendants' illegal, unethical, and unscrupulous business
2 practices, the Chinese communist regime used Mr. Ning's Protected Information—including his
3 pro-democracy communications stored on his private Yahoo! email account—to arrest and torture
4 him.

5 **III. MR. NING'S UNLAWFUL ARREST AND PRETRIAL TORTURE**

6 48. After PRC communist authorities obtained Mr. Ning's private communications from
7 the Yahoo! Defendants, twelve armed PRC officers surrounded Mr. Ning at a restaurant in
8 Chengdu. PRC officers blindfolded and handcuffed Mr. Ning, and they shackled his legs. They
9 warned: "If you don't obey, we can kill you. We will shoot you to death if you attempt to run." Mr.
10 Ning's worst fears had come true, despite the abundance of precautions he had taken to protect his
11 identity.

12 49. Soon after his arrest, PRC officers transferred Mr. Ning to a state security building in
13 his hometown of Shenyang. During the fifty-hour drive to Shenyang, PRC communist officers
14 deprived Mr. Ning of sleep, physically beat him about his face and limbs with batons and fists, and
15 repeatedly threatened to kill him. At no time during this trip was Mr. Ning anything other than
16 docile and compliant.

17 50. After reaching Shenyang, Mr. Ning was placed in solitary confinement and put under
18 twenty-four-hour surveillance. The cell was round and padded to prevent suicide. Mr. Ning would
19 soon understand why political prisoners would want to die.

20 51. Although PRC officers never disclosed the source of the information, they
21 interrogated Mr. Ning regarding the content of his Yahoo! email messages. Interrogations were
22 regularly conducted by teams of five to six individuals, all wearing a uniform bearing "1123." Mr.
23 Ning suspected that these numbers identified members of a notorious investigation team established
24 specifically to investigate and torture pro-democracy dissidents. Mr. Ning estimated that seventy
25 members of the 1123 investigation team participated in his interrogation. Each interrogation
26 generally lasted between four and six hours.

27 52. Mr. Ning suffered through countless interrogations, during which he endured
28 barbaric, abusive interrogation techniques constituting torture. By way of example only, on one

1 representative occasion, PRC interrogators woke Mr. Ning in the middle of the night. They walked
2 Mr. Ning outside—when the temperature was less than negative 13° Fahrenheit—while Mr. Ning
3 wore only underwear, a thin shirt, and plastic slippers. These officers repeatedly punched Mr. Ning
4 in the head. Blindfolded, Mr. Ning could not see who was hitting him or where the strikes
5 originated. Mr. Ning cried out, “I am in a blindfold! I am shackled and handcuffed in this cold
6 weather, I am shivering, and you still beat me up! This is immoral.” The officers continued to
7 threaten and punch Mr. Ning.

8 53. The officers finally escorted Mr. Ning back inside to the interrogation room. As they
9 usually did before interrogating Mr. Ning, the team shackled Mr. Ning to the Tiger Chair, a high-
10 backed, spiked chair created for the sole purpose of torture-based interrogation that causes
11 increasingly greater discomfort to the back and buttocks as handcuffs and shackles are
12 intermittently tightened. Thus began one of many interrogation sessions based on the content of Mr.
13 Ning’s Yahoo! email communications.

14 54. While the Tiger Chair painfully contorted Mr. Ning’s body, the main interrogator
15 asked, “Ning Xianhua, will you cooperate with this investigation?” Mr. Ning feared that if he
16 confessed, he may suffer more severe punishment. Mr. Ning therefore denied that he could
17 cooperate. In response, the chief interrogator shouted, “then hang him up!” Mr. Ning’s handcuffs
18 were then loosened and reattached to the top of the Tiger Chair. The back of the Tiger Chair is
19 about one-and-a-half meters high, so the tips of Mr. Ning’s feet could barely touch the ground once
20 handcuffed to the chair in this new position, thereby focusing extreme pressure on his wrists and
21 hands. The PRC investigator tightened the handcuffs as far as he could, so the handcuffs deeply cut
22 into the flesh of Mr. Ning’s arm. Mr. Ning dripped with sweat and blood. As a result of this
23 interrogation session, Mr. Ning permanently lost function in his arms and hands and cannot even
24 maintain a grip on a cup of water.

25 55. The questions in this interrogation, like many others, centered on Mr. Ning’s
26 interactions and communications with overseas, pro-democracy activists through his Yahoo! email
27 account. Investigators directly referenced the contents of emails exchanged between Mr. Ning and a
28 pro-democracy activist who lived in San Francisco. The investigators informed Mr. Ning that they

1 already had sufficient evidence to convict him based on the content of his email communications.
2 The investigators nevertheless violently demanded that Mr. Ning confess that he had conspired to
3 subvert the reign of the CCP and had communicated with overseas dissidents in so doing.

4 56. Mr. Ning's description of this portion of the interrogation reveals the level of pain
5 and suffering that he endured:

6 There were only two options for me at this point. One is begging for mercy. If I beg for
7 mercy, they may loosen my chains and take me down from hanging. Another option is I
8 could choose to commit suicide. I took notice that the interrogation table was about three
9 meters away, so I was attempting to swing on the chains to reach my head to the
10 interrogation table, so I could knock my head and die. I was full of pain, agony, anger, and
11 wrath. But three meters was just too far, so I was deliberately trying to move the Tiger Chair
12 closer to the interrogation table. The interrogators soon found my intention, so two officers
13 came in and used metal stakes to stabilize the chair, which would prevent me from
14 committing suicide. The officers said, "you want to die? We can kill you like an ant on the
15 ground. The only option is you obey and confess." So I told them, "in the past I could not
16 understand clearly why so many righteous people choose to commit suicide in detainment,
17 and today I finally realize and understand." When someone is tortured like this, their dignity
18 is trampled in such a way the only way he can defend his dignity is to choose to die. That
19 day was the most unforgettable day of my whole life because it was that day that I chose to
20 die rather than continue to experience extreme torture.

21 57. Interrogations like the one described above occurred before Mr. Ning had even been
22 formally arrested or put on trial at the People's Court of Shenyang. These pre-arrest, pre-conviction
23 torture sessions marked only the beginning of Mr. Ning's suffering caused by the Yahoo!
24 Defendants' disclosure of his private information.

25 **IV. MR. NING SUFFERS YEARS IN PRISON AFTER A SHAM CRIMINAL TRIAL.**

26 58. PRC officials submitted a memorandum to the Shenyang prosecutorial officials
27 advocating for Mr. Ning's prosecution based on evidence purportedly supporting Mr. Ning's
28 conviction. That memorandum revealed that Mr. Ning's prosecution and conviction relied on

1 information that the Yahoo! Defendants provided the PRC. Mr. Ning had used his Yahoo! email
2 account to communicate with pro-democracy activists overseas—including in the U.S.—and to
3 express his anti-communism, pro-democracy beliefs. The memorandum referenced pro-democracy
4 writings Mr. Ning circulated using his Yahoo! email account. One such writing obtained by the
5 PRC from Yahoo! Defendants and relied upon as a basis for Mr. Ning’s prosecution was an essay
6 titled *The Envisions on Establishing Unions in Northeast China*. That essay proposed, among other
7 things, reinforcing the pro-worker movements in Liaoyang and Daqing, employing the active forces
8 to form a “fist” against the communist regime, expanding the pro-democracy movement from
9 Northeast China to all of China, and disseminating the concept of democracy among Chinese
10 workers. The prosecutorial memorandum also accused Mr. Ning of submitting and receiving
11 numerous other pro-democracy communications over the internet using his Yahoo! email account.
12 However, because the memorandum was confidential and not accessible by Mr. Ning or his defense
13 counsel—and in light of the Yahoo! Defendants’ concealment of their involvement in Mr. Ning’s
14 arrest and prosecution—Mr. Ning had no idea this document existed or that the Yahoo! Defendants
15 had helped to bring about his arrest, conviction, and torture.

16 59. Nor was Mr. Ning afforded the right to confront his accusers or PRC witnesses. Mr.
17 Ning and his attorney knew that PRC authorities had relied on the substance of pro-democracy
18 messages related to communications he made with his Yahoo! email account, but he did not know
19 and could not have known that it was the Yahoo! Defendants who actually provided the evidence
20 supporting his conviction. Mr. Ning’s understanding was that his Yahoo! communications were
21 secure, so he had no reason to suspect they had been deliberately provided to the PRC. Indeed, PRC
22 officials did not allow Mr. Ning to view the evidence against him.

23 60. While awaiting a verdict in his criminal case, Mr. Ning endured over a month of
24 sleep deprivation, physical abuse, and starvation amounting to torture. Interrogation sessions like
25 the one described above continued while prosecutors weighed the evidence against him. Mr. Ning
26 never confessed to committing any crime, despite being interrogated with the Tiger Chair and
27 enduring physical beatings, starvation, sleep deprivation, and death threats by PRC officials.

28

1 61. Once convicted, Mr. Ning was transferred to the Number One Detention Center in
2 Shenyang, where he stayed for two years and four months. Each prisoner had a space approximately
3 twelve inches wide for sleeping. Mr. Ning received a minimal amount of food—the bare minimum
4 necessary to keep him alive. In the Number One Detention Center, Mr. Ning continued to
5 experience abuse in the form of physical beatings and pain inflicted by handcuffs and shackles.

6 62. This was one of the most psychologically challenging periods for Mr. Ning. Over
7 one hundred death row prisoners were housed at the Number One Shenyang Detention Center while
8 Mr. Ning was jailed there. Mr. Ning observed many of these prisoners being escorted to the
9 “execution field” never to return to their cells. One of those prisoners was a purported “co-
10 conspirator” of Mr. Ning’s who was sentenced to death for his political speech. As he was escorted
11 to the execution field, Mr. Ning could hear him shout, “Long live democracy!”

12 63. Following his imprisonment at Number One Detention Center, Mr. Ning was
13 transferred to the Dabei Prison in Shenyang. There, Chinese authorities forced Mr. Ning to provide
14 unpaid manual labor for approximately ten hours per day. Mr. Ning produced Christmas decorations
15 that were exported to North America and Europe. On days when Mr. Ning could not meet his
16 assigned quota, the guards punished him with longer hours, physical beatings, or both. Mr. Ning
17 lost count of how many times he was physically beaten as a result of missing his assigned quota.
18 This cycle of forced labor and physical beatings persisted for at least two months. Mr. Ning was
19 then transferred to Nanshan Prison in Jinzhou City, Liaoning Province, where he remained until his
20 release.

21 64. Importantly, Yahoo! Inc., Defendant Semel, and Defendant Yang knew that the PRC
22 would subject Mr. Ning to these abuses if they turned over his private emails and other Protected
23 Information to the communist regime. But they did it anyway to secure access to the lucrative
24 Chinese market. Operating from Yahoo!’s California headquarters, the Yahoo! Defendants made a
25 conscious decision to help the PRC arbitrarily arrest, unfairly imprison, and brutally torture Mr.
26 Ning—and others—to preserve their business interests in China. Yahoo! Inc., Semel, and Yang
27 stood to gain a significant amount of wealth from their operations in China. When the communist
28 regime sought their help, the Yahoo! Defendants knowingly and willingly released Protected

1 Information and messages of pro-democracy dissidents—including Mr. Ning—to preserve their
2 profits and personal wealth. The money the Yahoo! Defendants made from their Chinese operations
3 depended on the human rights violations Yahoo! Defendants facilitated.

4 **V. THE YAHOO! DEFENDANTS' MISCONDUCT HAUNTED MR. NING AFTER HIS RELEASE FROM**
5 **PRISON.**

6 65. After Mr. Ning completed his sentence and was released from prison, he was
7 arrested and detained again. Once more, Mr. Ning would suffer due to the Yahoo! Defendants'
8 actions. Because of Mr. Ning's prior conviction, PRC officials placed Mr. Ning on a heightened tier
9 of interrogation called the "Tiger Tier." The Tiger Tier involved enhanced physical abuse that
10 incorporated the Tiger Chair. Thus, PRC officers increased the intensity of the interrogation given
11 Mr. Ning's prior arrest and conviction based on his Yahoo! communications. During these violent
12 interrogations, which were similar to the session detailed above, authorities futilely demanded the
13 names of any co-conspirators who had attempted to subvert the reign of the CCP using online, pro-
14 democracy communications. Although once again subjected to the Tiger Chair and the abuse that
15 came with it, Mr. Ning warded off any thoughts of suicide, relying on the mettle he developed
16 during his previous torture.

17 66. On top of inflicting severe physical abuse in an attempt to extract further confessions
18 from Mr. Ning, the PRC authorities destroyed Mr. Ning's ancestral home in Shenyang and
19 everything in it—the same house in which he first experienced the evils of communism. They also
20 destroyed his father's home out of retaliation. The destruction of Mr. Ning's family home resulted
21 from Mr. Ning's pro-democracy advocacy, occurred without warning, and left his mother and father
22 homeless. Mr. Ning lost his position as an executive vice president and partner at a legal services
23 company and was unable to find different employment after his release. PRC authorities also failed
24 to provide Mr. Ning with even the most basic health care. Mr. Ning is diabetic, and at no point in
25 his detention or prison sentence did he receive medication or accommodations for his condition.

26 67. Left homeless, practically penniless, and in failing health, Mr. Ning was released on
27 bail and awaited trial. He lived in a state of fear—fear that was reasonable given that PRC officials
28 surveilled and stalked him.

1 **VI. MR. NING ESCAPED TO THE UNITED STATES AND FINALLY LEARNED OF THE YAHOO!**
2 **DEFENDANTS' INVOLVEMENT IN HIS ARREST, IMPRISONMENT, AND TORTURE.**

3 68. Though Mr. Ning sought redress for his torture and imprisonment, he knew it would
4 be futile to attempt to seek justice in the fundamentally corrupt Chinese legal system. Had he sought
5 such redress or made any complaint, the communist regime would have imprisoned and tortured
6 Mr. Ning for subversion. Therefore, with the assistance of the U.S. Consulate General in Shenyang,
7 Mr. Ning fled to Thailand before the PRC could imprison him again. The U.S. Embassy in Thailand
8 assisted Mr. Ning in processing an asylum claim in the United States.

9 69. Once Mr. Ning arrived in the United States, he was homeless and in failing health
10 because of the years of torture and abuse Defendants facilitated. He had lost his home, most of his
11 material possessions, and the financial security that came with his previous executive position at a
12 legal services company. Mr. Ning's failing health, combined with the fact that he does not speak
13 English, rendered Mr. Ning wholly dependent on others once he arrived in the United States. The
14 Yahoo! Defendants have always concealed and never disclosed that they provided PRC officials
15 with information that led to Mr. Ning's arbitrary arrest and conviction, inhumane torture, and
16 resulting permanent injuries. When the U.S. House of Representatives Foreign Affairs Committee
17 demanded that the Yahoo! Defendants supplement their previous statements regarding the pro-
18 democracy dissidents that they effectively turned over to the PRC, these Defendants continued to
19 conceal their actions with respect to Mr. Ning. The Yahoo! Defendants never supplemented their
20 testimony before U.S. House of Representatives Foreign Affairs Committee by identifying Mr.
21 Ning as a victim of their misconduct, and the Yahoo! Defendants have never publicly disclosed that
22 they secretly turned over Mr. Ning's Protected Information to PRC authorities as alleged in this
23 Complaint.

24 70. As Mr. Ning slowly healed in the United States, he finally learned that the Yahoo!
25 Defendants were involved with his arrest, imprisonment, and torture. Even if Mr. Ning had learned
26 of the Yahoo! Defendants' misconduct while he remained in China, any efforts to obtain justice
27 would have been futile and dangerous for Mr. Ning and his family. In the years leading up to his
28 departure from China, Mr. Ning was either in prison or under constant surveillance and scrutiny by

1 PRC authorities. The Chinese communist regime would have imprisoned him immediately had he
2 sought civil relief in China. The PRC communist regime systematically imprisons those who dare
3 publicize or criticize the regime's practice of censoring speech and imprisoning political dissidents
4 in blatant violation of international law. To challenge the PRC's restrictions of free speech in China
5 would have endangered Mr. Ning's family and himself. The PRC communist regime systematically
6 silenced political dissidents by any means necessary, including torture and cruel treatment,
7 prolonged arbitrary detention, imprisoning and punishing dissidents' family members, destruction
8 of their property, and the imposition of the death penalty for peaceful protest.

9 71. Mr. Ning hopes that, through this lawsuit, the Yahoo! Defendants are finally made to
10 answer for the torture and injuries befalling Mr. Ning as a result of their misconduct. He also hopes
11 that the Yahoo! Defendants reveal the identity of other political dissidents that they helped imprison
12 pursuant to their agreement with the PRC communist regime. So long as the victims of Yahoo!
13 Defendants' misconduct remain unknown, they are not likely to receive the help they need.

14 **CLAIMS FOR RELIEF**

15 **I. VIOLATIONS OF THE LAW OF NATIONS, 28 U.S.C. § 1350.**

16 72. Mr. Ning incorporates all other paragraphs in this Complaint here as if fully restated.

17 73. Because of the Yahoo! Defendants' actions alleged herein, Mr. Ning suffered torture
18 and other forms of cruel, inhuman, and degrading treatment or punishment, crimes against
19 humanity, and prolonged arbitrary arrest and detention (**Violations**). Each of the Yahoo!
20 Defendants aided and abetted these Violations and conspired with the PRC communist regime to
21 commit those Violations. These Violations were part of a widespread and systematic persecution of
22 pro-democracy freedom advocates and any other Chinese citizen engaged in any criticism of the
23 regime's policies or actions.

24 74. Defendants Yang, Semel, and Yahoo! Inc. entered into an agreement with the PRC
25 communist regime pursuant to which Yahoo! employees and Agents would provide Yahoo!
26 customers' Protected Information and communications upon request by PRC officials without
27 providing notice to those Yahoo! customers. Pursuant to Defendants' agreement with the PRC and
28 their specific instructions issued from California, Yahoo! employees and Agents turned over Mr.

1 Ning's private email communications and other Protected Information stored on his Yahoo! account
2 to PRC authorities with the knowledge and intent that the PRC would silence Mr. Ning by
3 committing the Violations defined above.

4 75. The Yahoo! Defendants entered the partnership and agreement with the PRC
5 communist regime in Sunnyvale, California. This agreement with the PRC exceeded Yahoo!
6 Defendants' ordinary business activities, forming a secret pact with a notoriously abusive foreign
7 government which Defendants knew would lead inescapably to exactly the kinds of human rights
8 violations suffered by Mr. Ning. Through that agreement, the PRC communist regime extended its
9 reach to Sunnyvale, California, from which the Yahoo! Defendants aided and abetted the silencing
10 of pro-democracy messages within China, leaving China, and entering China. Pursuant to this
11 agreement and active partnership—and pursuant to specific orders and directives by the Yahoo!
12 Defendants issued from California—Yahoo! and its Agents turned over the Protected Information
13 of Yahoo! customers like Mr. Ning to the PRC communist regime. The information produced by the
14 Yahoo! Defendants to PRC officials—and leading to Mr. Ning's imprisonment and torture—
15 included without limitation pro-democracy email exchanges between Mr. Ning in China and pro-
16 democracy activists in San Francisco, California. The Yahoo! Defendants controlled the
17 information belonging to their customers from California, and they specifically elected to turn it
18 over to the PRC communist regime to further their personal financial interests.

19 **II. TORTURE VICTIMS PROTECTION ACT, 28 U.S.C. § 1350 NOTE.**

20 76. Mr. Ning incorporates all other paragraphs in this Complaint here as if fully restated.

21 77. PRC authorities intentionally inflicted physical and mental pain on Mr. Ning with the
22 specific purposes of extracting a confession from him, obtaining information regarding other pro-
23 democracy political dissidents, intimidating Mr. Ning, and punishing Mr. Ning for his pro-
24 democracy communications and beliefs. PRC authorities starved Mr. Ning for days. They deprived
25 him of sleep for days at a time. They beat him continuously for hours and subjected him to the Tiger
26 Chair for multiple hours on numerous occasions. PRC officials regularly threatened to kill Mr. Ning
27 and expressed a ready willingness to snuff out his life, a threat made more real by Mr. Ning's
28 witnessing of other pro-democracy dissidents being led to the execution field. The initial request for

1 Mr. Ning's information and all of the horrific acts that followed were carried out under the color of
2 the PRC's legal authority.

3 78. Defendants Yang and Semel knowingly aided and abetted the PRC's torture of Mr.
4 Ning through their control over the disclosure of Mr. Ning's confidential information and their
5 knowing disclosure of this information to the Chinese regime for the purposes of repressing pro-
6 democracy freedom advocates. Prior to their guiding Yahoo!'s business into the Chinese market,
7 Defendants Yang and Semel knew that the Chinese government employed torture to silence and
8 punish political dissenters and to extract information from them. Defendants Yang and Semel
9 nonetheless specifically instructed their companies' employees and Agents to provide Yahoo!
10 customers' private records and communications upon request by PRC officials, despite knowing
11 that providing this information would directly lead to state torture and execution of customers like
12 Mr. Ning. This premeditated collaboration with PRC officials constituted more than general
13 supervision of company affairs by Defendants Yang and Semel. Rather, pursuant to Defendants
14 Yang's and Semel's agreement with the PRC and their specific instructions issued from California
15 through the company's vertical structure, Yahoo! employees and Agents turned over Mr. Ning's
16 private email communications and other Protected Information stored on his Yahoo! account to
17 PRC authorities with the knowledge and intent that the PRC would torture Mr. Ning as alleged in
18 this Complaint. In doing so, Defendants acted under the color of foreign authority pursuant to their
19 secret agreement to facilitate the Chinese communist regime's systematic repression of pro-
20 democracy freedom advocates.

21 **III. Unfair & Unlawful Business Acts and Practices, California Business & Professions Code §§**
22 **17200, et seq.**

23 79. Mr. Ning incorporates all other paragraphs in this Complaint here as if fully restated.

24 80. The Yahoo! Defendants' disclosure of Mr. Ning's private emails and other Protected
25 Information stored on his Yahoo! account violates California's Unfair Competition Law (UCL).
26 Cal. Bus. & Prof. Code § 17200, which broadly proscribes any business practice or act that is
27 unlawful, unfair, or fraudulent.

28

1 81. In order to enter the Chinese market and maintain their financial advantage, the
2 Yahoo! Defendants agreed to help the PRC apprehend Chinese pro-democracy dissidents by turning
3 over the Protected Information of their consumers. This misconduct occurred in Sunnyvale,
4 California, where Yahoo! Defendants ordered and oversaw the disclosure of Yahoo! customers'
5 Protected Information to the PRC.

6 82. Business & Professions Code § 17204 provides that an action for violation of
7 California's unfair competition law may be brought by persons who have suffered injury in fact and
8 have lost money or property as a result of such unfair competition, and Business & Professions
9 Code § 17203 provides that a court may grant injunctive and equitable relief to such persons.

10 83. Mr. Ning has suffered an injury in fact and has lost money and property as a result of
11 Yahoo! Defendants' practices, including the loss of his ancestral home, job, and most of his
12 possessions.

13 **Unlawful Practices**

14 84. Yahoo! Defendants' business practices were unlawful insofar as they are actionable
15 under the Alien Tort Statute, 28 U.S.C § 1350; the Torture Victims Protection Act, 28 U.S.C §
16 1350; and other statutory and common law.

17 85. Yahoo! Defendants' conduct violated the spirit and letter of these laws, which
18 protect property, economic and privacy interests and prohibit unauthorized disclosure and collection
19 of private communications and personal information. By knowingly and intentionally accessing Mr.
20 Ning's Protected Information, disclosing it to Chinese authorities without Mr. Ning's consent, and
21 aiding and abetting the PRC's torture of Mr. Ning, Yahoo! Defendants integrated a multitude of
22 illegal acts into their business practices.

23 86. Plaintiff reserves the right to allege other violations of law that constitute unlawful
24 business acts or practices based upon the above-described conduct.

25 87. Plaintiff has suffered injury in fact and has lost money and property as a result of
26 Defendant's unfair competition and is therefore entitled to injunctive relief including restitution
27 under Business & Professions Code §§ 17200, *et seq.*

28

Unfair Practices

1 **Unfair Practices**
2 88. Yahoo! Defendants’ business practices were unfair because they gave the Yahoo!
3 Defendants an illegal advantage in the Chinese market. Other internet platforms have been blocked
4 from the Chinese market due to their refusal to censor or compromise their users’ privacy and
5 security, which left consumers in China with limited ways to communicate electronically. Yahoo!
6 Defendants took advantage of other companies’ reluctance to violate human rights and privacy laws
7 in order to enter the Chinese market and preserve their financial advantage. They saw the value of
8 dissidents’ personal information and profited from it by turning over emails and other Protected
9 Information to PRC officials. This was an unethical and oppressive business practice that resulted in
10 substantial injury to Mr. Ning through the loss of his ancestral home, job, and most of his
11 possessions, along with serious and lasting physical harm.

12 89. Any justification for Yahoo! Defendants’ conduct is outweighed by the gravity of the
13 consequences to Plaintiff as alleged above. There were reasonable available alternatives for the
14 Yahoo! Defendants to further their business interests such as refusing to disclose their users’
15 Protected Information to the Chinese authorities and/or making their users aware of these unethical
16 practices. Indeed, the burden and expense of not disclosing Plaintiff’s information to the Chinese
17 authorities and/or informing their users of their intentions would be minimal while the negative
18 impact to Plaintiff was significant. Such actions taken by the Yahoo! Defendants is also contrary to
19 public policy, immoral, unethical, oppressive, unscrupulous, and substantially injurious.

20 90. Further, Yahoo! Defendants’ conduct constitutes “unfair” business acts and practices
21 because Yahoo! Defendants’ practices were “likely to cause substantial injury” to Mr. Ning—and
22 did in fact cause Mr. Ning substantial injuries. These injuries were not “reasonably avoidable” by
23 Plaintiff, and the injuries are “not outweighed” by the practice’s benefits to Mr. Ning.

24 91. As a result of the Yahoo! Defendants’ misconduct, Mr. Ning has suffered injury in
25 fact and lost money and property and is therefore entitled to injunctive relief including restitution
26 under Business and Professions Code §§ 17200, *et seq.*

RELIEF SOUGHT

27
28 92. Mr. Ning seeks recovery of actual damages for the following:

- 1 A. Permanent loss of bodily function he sustained during the imprisonment and
- 2 torture alleged herein;
- 3 B. Permanent disfigurement he sustained during the imprisonment and torture
- 4 alleged herein;
- 5 C. Past and future medical expenses associated with treating Mr. Ning for injuries
- 6 he sustained during the imprisonment and torture alleged herein;
- 7 D. Damages for lost income due to Mr. Ning's loss of employment and his
- 8 decreased capacity to earn a living given his current state;
- 9 E. Reimbursement for the destruction of his home; and
- 10 F. Mental anguish and physical suffering Mr. Ning sustained during the
- 11 imprisonment and torture alleged herein.

12 93. Mr. Ning also seeks punitive damages because he sustained injuries as a result of
13 misconduct by the Yahoo! Defendants that was knowing, intentional, malicious, reckless, or some
14 combination thereof.

15 94. Mr. Ning also seeks restitution and an order enjoining Defendants' unlawful and
16 unfair practices, pursuant to California Business and Professions Code §17203.

17 95. Mr. Ning seeks reasonable attorney's fees and costs he has incurred and will incur in
18 prosecution of his claims against the Yahoo! Defendants.

19 **PRAYER**

20 Plaintiff respectfully asks that the Court grant the relief requested above and all other relief
21 to which Plaintiff is entitled, whether by law or equity.

22

23 *[Signature blocks on next page]*

24

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28

1 DATED: September 2, 2020

/s/ Paul L. Hoffman

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DEMAND FOR JURY

Plaintiff hereby demands a trial by jury on all issues as provided by Rule 38(b) of the Federal Rules of Civil Procedure.

DATED: September 2, 2020

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