

SCHONBRUN SELOW
HARRIS & HOFFMAN LLP

11543 W. Olympic Blvd.
Los Angeles, CA 90064
(310) 396-0731 (310) 399-7040 (fax)
www.sshhlaw.com

Benjamin Schonbrun
Michael D. Seplow
Wilmer J. Harris
Paul L. Hoffman
Catherine E. Sweetser
Aidan C. McGlaze
Isabel M. Daniels
Colleen M. Mullen

Of Counsel
Erwin Chemerinsky
*Illinois and Dist. Columbia

South Pasadena Office
715 Fremont Avenue
Suite A
South Pasadena, CA 91030
(626) 441-4129
(626) 283-5770 (fax)

April 28, 2017

VIA E-FILING

Molly C. Dwyer
Clerk of the Court
United States Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103-1526

Re: *Doe I, et al. v. Cisco Systems, Inc.*, No. 15-16909
[Argued April 18, 2017 before the Honorable Stephen Reinhardt, A. Wallace Tashima, and Marsha Berzon]

Dear Ms. Dwyer:

During the April 18, 2017 proceeding, the undersigned counsel respectfully offered to submit a supplemental letter noting specific paragraphs in Plaintiffs' Second Amended Complaint that demonstrate that Defendants aided and abetted the alleged violations from Cisco's headquarters in San Jose, California. Plaintiffs submit this letter and the attached Index to assist the court in determining that Plaintiffs' complaint alleges in sufficient detail that Defendants, a U.S. company and its executives, created first of a kind unique designs, trained Chinese security in the use of and participated in major ways in the design, creation, and customization of the anti-Falun Gong system of the Golden Shield from San Jose. The Defendants further serviced and troubleshooted the Golden Shield from San Jose. The Index identifies for the court sufficient allegations that Defendants acted in San Jose with clear knowledge and even the purpose that the Chinese authorities would and did use the system to identify persons across China and subject them to persecution, forced conversion via torture, and the other violations alleged based on their membership in the Falun Gong-based religious community. The allegations listed in the Index also note Defendants' efforts to convince the Chinese to award them parts of the Golden Shield contract, efforts which included demonstrations and pledges that Defendants' system was and would be the most effective system for the persecution of Falun Gong believers.

Cisco personnel in San Jose tailored, optimized, and supported the system to enable Chinese security to specifically target, identify, apprehend, round up, detain, convert, and torture Falun Gong believers as part of a widespread attack against the religious group across China. As is also noted in the attached index, Cisco's aiding and abetting of the discriminatory

Doe I, et al. v. Cisco Systems, Inc.

April 28, 2017

Page 2 of 2

identification and arbitrary rounding up and detention of Falun Gong believers greatly enhanced the capacity of Chinese security to carry out all other alleged violations.

Respectfully submitted,

By: */s/ Paul Hoffman*
Paul Hoffman

cc: All counsel of record (by ECF)

INDEX OF RELEVANT SAC ALLEGATIONS

A. SAC Allegations that a Separate Anti-Falun Gong System Was Designed in the United States, with Substantial Effects on Violations against the Falun Gong

1. SAC Allegations that Overall Design of the Anti-Falun Gong System Occurred in the United States

- ¶¶ 54-57, 76 (China turned to Western technologies companies for the design of the apparatus.).
- ¶¶ 75, 95, 126, 127, 129 (Cisco handled all aspects of anti-Falun Gong design in San Jose.).
- ¶¶ 81-85 (Such designs were uniquely tailored to persecute Falun Gong believers.).
- ¶¶ 87, 131, 132 (Cisco custom-designed and created the anti-Falun Gong system based on specialized technical specifications for persecuting the Falun Gong.).
- ¶¶ 76, 80-86, 97(f), 98 (Cisco's designs featured unique first-of-a-kind features related to the persecution of the Falun Gong.).
- ¶¶ 81, 98 (k), 131, 132; 5, 41 (The anti-Falun Gong system was separate and apart from the ordinary criminal justice and other dual-purpose systems, with unique features designed for the persecutory campaign.).
- ¶ 126 (The key components of the Golden Shield were also physically created in the United States.).
- ¶¶ 79-80, 82, 83, 97 (a – d), 97 (f), 278; ¶¶ 97 (e), 98 (g); ¶¶ 82-86, 88, 91, 98 (h) (Key networked components of the anti-Falun Gong system are customized to identify all Falun Gong believers, apprehend and round them up, and subject them to forced conversion via torture practices; the

identification, apprehension/detention and forced conversion systems are distinct from one another in design and operation.).

2. SAC Allegations that the Anti-Falun Gong System Designed in San Jose Enabled and Assisted Forced Conversion through Torture and Other Violations, including by the Identification and Rounding Up of Falun Gong Members

- ¶¶ 82-86, 88-89, 91, 96, 98 (h-j) (San Jose designs enabled Chinese security to subject believers to forced conversion through torture via unique network features not necessary for identification, such as special integration into torture facilities, determining the level of victims' resistance and vulnerabilities, and determining the most appropriate methods for their forced conversion.).
- ¶¶ 88-89, 98(i-j), 100-01, 122 (San Jose designs enabled this by an end-to-end system that collected, stored, and analyzed Falun Gong believers' profile information, including unique data not necessary for identification and only used for torture such as susceptibility to threats and torture, and previous torture experience.).
- ¶¶ 99, 111, 117, 119 – 120; 233, 243, 260, 269, 273, 279, 281, 292, 299, 302, 313, 327, 343. (This unique anti-Falun Gong system was used by Chinese security to forcibly convert Falun Gong believers.).
- ¶¶ 79-80, 82-83, 97 (a – d), 97 (f), 278, 295 (San Jose designs for anti-Falun Gong system enabled Chinese security to identify believers with industry-leading technology, including custom-developed signatures able to identify over 90% of Falun Gong pictorial information.).
- ¶¶ 76, 97 (e), 98 (g) (San Jose designs enabled Chinese security to apprehend and take believers into long-term custody.).

- ¶¶ 87, 132. (San Jose designs included special restricted access and confidentiality protections only for specialized public security units and personnel.).
- ¶¶ 266-68, 277-78, 287-89, 294-98, 334-35, 351-52, 354. (Implemented designs were used by Chinese security to identify, apprehend and detain believers.).
- ¶¶ 246, 254, 259, 271-72, 282; ¶¶ 335, 353, 290, 307, 317; ¶¶ 45-46, 48-50 (Detained believers were deprived of proper judicial process, appropriate medical care and other due process rights.).
- ¶¶ 82-86, 88, 91, 96, 98 (h-j) (San Jose designs enabled Chinese security to subject believers to forced conversion through torture practices via a unique anti-Falun Gong system).
- ¶¶ 80 – 86, 97 –101 (Cisco San Jose customized anti-Falun Gong system features to collect, store and analyze specific information about individual Falun Gong believers outside of the ordinary criminal justice system.).

B. SAC Allegations that Training, Servicing and Troubleshooting Occurred in the United States

- ¶¶ 92, 102, 134, 140, 145-46. (Cisco San Jose trained, serviced and conducted troubleshooting for the apparatus from San Jose at least until 2008.).

C. SAC Allegations that the Decision-making and Control Necessary for the Anti-Falun Gong Module's Success Occurred in the United States

- ¶108 (The decision-making central to the success of the implementation processes, including construction, testing, verification, optimization and servicing were approved by, enacted and orchestrated in San Jose.).
- ¶ 127 (Decision-making was orchestrated from San Jose.).

- ¶ 128 (San Jose planned all steps of the marketing campaign.).
- ¶ 134 (intensive involvement of San Jose in customer service, network maintenance, training, and decision making to enable persecutory goals of the Golden Shield).
- ¶¶ 79-80, 82, 83, 97 (a – d), 97 (f), 278; ¶¶ 97 (e), 98 (g); ¶¶ 271-72, 282-83, 288-89, 291, 295-98, 335, 352, 354; ¶¶ 246, 254, 259, 271-72, 282; ¶¶ 335, 353, 48, 290, 307, 317; ¶¶ 45-46, 48-50. (Persecutory goals San Jose sought to enable included the identification of believers with industry-leading technology, apprehension and long-term custody, etc. that constitute acts of religious persecution.).
- ¶¶ 138-39 (Cisco San Jose directly oversaw the operations of Cisco China, shared the same management structure, and cross-appointed executives with internal reporting charts indicating a clear chain of command in which all operations in China were reported to and major decisions were directed by executives in San Jose.).
- ¶ 145 (For technologically advanced important overseas projects like the Golden Shield, Defendants assigned San Jose-based engineering resources to design and implement the project in its entirety through its Advanced Services Team, a specialized service offered by Cisco San Jose.).
- ¶¶ 68, 155 (Cisco China’s presentation materials at trade shows and public security system designs were approved and authorized by Cisco San Jose.).

D. SAC Allegations that Cisco Solicited and Marketed its Anti-Falun Gong Work from the United States

- ¶¶ 54-57, 76 (Chinese security lacked the technological expertise to stop Falun Gong.).
- ¶¶ 58-59, 69, 74, 133 (Defendants solicited and directed Cisco’s marketing

to meet anti-Falun Gong purposes from San Jose, and won successive contracts as a result.).

E. SAC Allegations That Cisco Had the Requisite Mens Rea for Aiding and Abetting at the Time of the Aforementioned Acts.

1. *SAC Allegations Regarding Third Party Coverage and Cisco's Responses Which Evince the Mens Rea.*

- ¶¶ 49-50, 159-65, 165, 167, 173. (Since 1999, the U.S. State Department, the UN, the European Parliament, and international human rights organizations, and numerous media outlets have widespread graphic documentation of the violations the SAC alleges were committed against Falun Gong believers in China.).
- ¶ 51 (Use of the Golden Shield to further these abuses was widely reported by media outlets, the U.S. government, the UN, and international human rights organizations since 1999.).
- ¶¶ 174, 177 (Cisco executives reviewed and responded to reports, newsletter articles and over half a dozen stockholder resolutions discussing potential or actual abuses carried out against Falun Gong believers in China via the Golden Shield since 2002.).
- ¶¶ 88-89 (Reports that the Falun Gong Golden Shield databases were specifically needed to subject Falun Gong to forced conversion via torture practices with detail as to how to carry out these abuses were communicated to Cisco headquarters)
- ¶ 107 (Cisco continued to assist China in the construction of the anti-Falun Gong module of the Golden Shield after its responses to these reports.).

2. SAC Allegations Regarding the Nature of Cisco San Jose's Assistance Which Evince the Mens Rea

- ¶¶ 57-74; 117, 118 (Cisco did not sell standalone routers off-the-shelf, but was concerned with achieving the persecutory objectives, and customizing an end-to-end solution for doing so.).
- ¶¶ 71, 79, 88, 89 (Persecutory purposes made clear in demands by Chinese security and reported to San Jose.).
- ¶¶ 179, 181 (Cisco marketed and pandered to Chinese security's stated objective to persecute Falun Gong believers.).
- ¶¶ 75-95 (Cisco designed the specifically anti-Falun Gong system/Falun Gong module with its unique features to facilitate the use of the apparatus to commit the human rights abuses.).¹
- ¶ 87 (Cisco could not have created a unique first-of-its-kind system without understanding the end uses and objectives.).
- ¶¶ 81, 83 (The anti-Falun Gong system included special features that were not part of the ordinary crime control apparatus, such as a dedicated anti-Falun Gong database, and unique applications such as the National Information System for Falun Gong Contact Persons.).
- ¶¶ 98(i)-(j), 100, 101, 122. (The anti-Falun Gong system further included special sources and types of information not collected anywhere else, such as human rights activity history, forced interrogation history, and "lifetime"

¹ Mark Chandler, General Counsel of Cisco San Jose, also acknowledged the persecutory purposes of the Golden Shield to the Senate in 2008 when he defined the phrase that appeared on an internal Cisco power point slide ("*douzheng* Falun Gong") as a *crack-down against a religious group, i.e., Falun Gong believers*). The very next slide in this power point describes this objective as an opportunity for Cisco in design, construction, training and maintenance. Opening Brief, at 25-26; SAC ¶ 216.

profiles of Falun Gong members; this information would make it immediately apparent to anyone that human rights abuses were involved.).

- ¶¶ 86, 98 (h), 114. (Unique anti-Falun Gong system included special connections and integrations to torture sites.).
- ¶¶ 87, 132. (The anti-Falun Gong system also included special restricted access and confidentiality protections only for Office 610 personnel.).
- ¶¶ 41, 78 (“Office 610” was created as a subdivision of the Chinese Communist Party [“the Party”] in June 1999 by Jiang Zemin and the Party to micromanage the persecution and elimination of the religious group.).
- ¶¶ 97(c), 192 (Cisco developed industry-leading signatures able to identify over 90% of Falun Gong pictorial content by collecting and analyzing large numbers of Falun Gong pictures depicting torture, and provided updates on a regular basis with San Jose’s approval.).

3. SAC Allegations Regarding Internal Documents Which Evince the Mens Rea

- ¶¶ 88-91 (Internal documents and experts show the Party’s persecutory demands were reported to Cisco San Jose by Cisco’s public security team, including the use of the Falun Gong databases to forcibly convert through torture.).
- ¶¶ 31, 37, 61, 62, 175, 187, 216 (Headquarters’ internal documents contain reports that acknowledge and pledge to satisfy the repressive anti-Falun Gong purposes of the Golden Shield apparatus, and the use of *douzheng* – a purge, crackdown, or widespread persecution – of religious group Falun Gong, including Chinese court and prosecutorial reports.).

Appellate Case No. 15-6909

CERTIFICATE OF SERVICE

I hereby certify that on April 28, 2017, I filed the foregoing document:
Plaintiffs-Appellants' Letter Brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the Ninth Circuit electronic filing system ECF.

I certify that all parties are registered and will be served electronically via the Ninth Circuit electronic filing system ECF.

Dated: April 28, 2017

Signature: s/ Alex Smith
Alex Smith
Paralegal