

DISSEMINATED BY MERCURY PUBLIC AFFAIRS, LLC, A REGISTERED FOREIGN AGENT, ON BEHALF OF Q CYBER TECHNOLOGIES LTD. MORE INFORMATION IS ON FILE WITH THE DEPT. OF JUSTICE, WASHINGTON, DC.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

WHATSAPP INC., a Delaware corporation,
and FACEBOOK, INC., a Delaware
corporation,

Plaintiffs,

v.

NSO GROUP TECHNOLOGIES LIMITED
and Q CYBER TECHNOLOGIES LIMITED,

Defendants.

Case No. 4:19-cv-07123-PJH

**[PROPOSED] ORDER GRANTING
MOTION OF DEFENDANTS NSO
GROUP TECHNOLOGIES LIMITED
AND Q CYBER TECHNOLOGIES
LIMITED TO DISMISS UNDER
FEDERAL RULES 12(B)(1), 12(B)(2),
12(B)(6), AND 12(B)(7)**

1 The Court, having fully considered the motion of Defendants NSO Group Technologies
2 Limited and Q Cyber Technologies Limited to dismiss the Complaint and all points and
3 authorities filed in support of and in opposition to the motion and the arguments of counsel, and
4 GOOD CAUSE THEREFOR APPEARING, IT IS HEREBY ORDERED:

5 1. The motion is GRANTED.

6 2. The Court is without subject matter jurisdiction because the Foreign Sovereign
7 Immunities Act and derivative sovereign immunity bar this action. 28 U.S.C. § 1604; *Butters v.*
8 *Vance Int'l, Inc.*, 225 F.3d 462, 466 (4th Cir. 2000).

9 3. There is no personal jurisdiction in California over either Defendant because
10 Defendants did not consent to personal jurisdiction, Defendants are not “at home” in California
11 for purposes of general jurisdiction, and Plaintiffs have not alleged sufficient contacts between
12 Defendants and California to establish specific jurisdiction. *See Schwarzenegger v. Fred Martin*
13 *Motor Co.*, 374 F.3d 797, 800–02 (9th Cir. 2004).

14 4. Plaintiffs’ failure to join indispensable parties, specifically Defendants’ foreign
15 sovereign customers, requires dismissal under Rules 12(b)(7) and 19.

16 5. Plaintiffs fail to state a claim under the Computer Fraud and Abuse Act or for
17 trespass to chattels. Fed. R. Civ. P. 12(b)(6). Plaintiffs do not adequately plead that Defendants
18 accessed their servers “without authorization,” 18 U.S.C. § 1030(a); *LVRC Holdings LLC v.*
19 *Brekka*, 581 F.3d 1127, 1133, or that any access damaged Plaintiffs’ servers, *Intel Corp. v.*
20 *Hamidi*, 30 Cal. 4th 1342, 1347 (2003).

21 6. Plaintiffs’ Complaint is, accordingly, dismissed with prejudice.

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23 IT IS SO ORDERED.

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25 Dated: _____, 2020

26 THE HONORABLE PHYLLIS J. HAMILTON
27 CHIEF UNITED STATES DISTRICT JUDGE

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