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6 UNITED STATES DISTRICT COURT

7 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

8 U.S. WECHAT USERS ALLIANCE,
9 CHIHUO INC., BRENT COULTER,
10 FANGYI DUAN, JINNENG BAO,
ELAINE PENG, and XIAO ZHANG,

11 Plaintiffs,

12 v.

13 DONALD J. TRUMP, in his official
14 capacity as President of the United States,
and WILBUR ROSS, in his official
15 capacity as Secretary of Commerce,

16 Defendants.

Case No. 3:20-cv-05910

**SECOND AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

1
2 1. Public space in the digital age is defined by platforms and users rather than
3 physical places with geographic boundaries. Cyberspace, particularly social media, is one
4 of “the most important places” to exchange views. *Packingham v. North Carolina*, 582
5 U.S. —, 137 S. Ct. 1730, 1735 (2017). Few digital public squares are as large as that
6 found on WeChat. Released in 2011, WeChat is now one of the world’s most popular
7 mobile telephone and social media applications (“app”), with over 1 billion monthly active
8 users.¹

9 2. Approximately 19 million users rely on the app in the United States, and it is
10 the primary app Chinese-speakers in the U.S. use to participate in social life by connecting
11 with loved ones, sharing special moments, arguingdiscussing ideas, receiving up-to-the
12 minute news, and participating in political discussions and advocacy.² As a “super-app,”
13 WeChat users also rely on the app to make telephone calls, hold video conferences, upload
14 documents, share photos, and make payments.³ It has become essential to the conduct of
15 daily life for its users, many of whom regularly spend hours each day on the app.

16 3. WeChat is also used for numerous societally important purposes, including
17 by public institutions. For example, as the coronavirus pandemic continues to separate
18 people physically, WeChat has been used in the United States by police departments to
19 inform the public about testing center locations, by volunteers to organize the delivery of
20

21 ¹ Rayna Hollander, *WeChat has hit 1 billion monthly active users*, BUSINESS INSIDER
22 (Mar. 6, 2018, 11:59 a.m.), <https://www.businessinsider.com/wechat-has-hit-1-billion-monthly-active-users-2018-3>; Iris Deng and Celia Chen, *How WeChat became China’s everyday mobile app*, SOUTH CHINA MORNING POST (Aug. 16, 2018),
23 <https://www.scmp.com/tech/article/2159831/how-wechat-became-chinas-everyday-mobile-app>.

24 ² Rick Smith, *Crackdown on WeChat could hinder millions of US users who rely on social media tool*, WRAL TECHWIRE (Aug. 19, 2020),
25 <https://www.wraltechwire.com/2020/08/19/crackdown-on-wechat-could-hinder-millions-of-us-users-who-rely-on-social-media-tool/>.

26 ³ Bani Sapra, *This Chinese super-app is Apple’s biggest threat in China and could be a blueprint for Facebook’s future. Here’s what it’s like to use WeChat, which helps a billion users order food and hail rides*, BUSINESS INSIDER (Dec. 21, 2019),
27 <https://www.businessinsider.com/chinese-superapp-wechat-best-feature-walkthrough-2019-12>.
28

1 medical supplies, and by families to stay in touch with isolated elderly relatives in nursing
 2 homes. WeChat is also used by individuals and groups—including churches—for
 3 religious and cultural purposes, including: group prayer, organizing for holidays and
 4 events, taking care of the poor, sick and infirm, and education.

5 ~~4. — In the United States and across the world, national governments engage in
 6 dragnet surveillance of digital communications of ordinary people. Because governmental
 7 surveillance is all pervasive and occurs at the network level, communications over
 8 WeChat, like communications on all other apps that run on our systematically surveilled
 9 internet infrastructure, are captured by this dragnet.~~

10 ~~5. — Despite widespread knowledge of these practices, hundreds of millions of
 11 people in this country voluntarily use surveilled devices and apps to participate in all facets
 12 of social and economic life every day. This is the case for WeChat users in the United
 13 States, where it is widespread knowledge amongst users that both the United States and
 14 Chinese governments monitor WeChat communications.⁴ WeChat users in the United
 15 States continue to use and rely on the app, knowing that Big Brother is watching.~~

16 6.4. On August 6, 2020, the President issued Executive Order 13943 entitled
 17 “Addressing the Threat Posed by WeChat, and Taking Additional Steps To Address the
 18 National Emergency With Respect to the Information and Communications Technology
 19 and Services Supply Chain,” 85 FR Fed. Reg. 48641 (“the Executive Order”). Citing
 20 national security concerns, the Executive Order bans what appears to be all uses of
 21 WeChat by anyone within the United States as well as “U.S. persons” outside the United
 22 States. Section 1(a) of the Executive Order prohibits people and property subject to U.S.
 23 jurisdiction from carrying out “transactions” with WeChat after 45 days of the Executive
 24

25 ~~⁴ See Arjun Kharpal, *Chinese tech giant Tencent reportedly surveilled foreign users of*
 26 *WeChat to help censorship at home*, CNBC (May 8, 2020),
 27 <https://www.cnbc.com/2020/05/08/tencent-wechat-surveillance-help-censorship-in-china.html>;
 28 *Tim Lau, The Government Is Expanding Its Social Media Surveillance Capabilities*, BRENNAN CENTER FOR JUSTICE (May 22, 2019),
<https://www.brennancenter.org/our-work/analysis-opinion/government-expanding-its-social-media-surveillance-capabilities>.~~

1 Order’s issuance. Section 2(a) prohibits any transaction “by a United States person or
 2 within the United States” that evades, avoids, or violates the uncertain prohibition in
 3 Section 1(a). Maddeningly, the Executive Order does not define what those transactions
 4 include, leaving individuals and companies at a loss as to whether they will risk civil
 5 and/or criminal prosecution and penalties if they do not fundamentally change the way
 6 they communicate or run their businesses. The vaguely worded Executive Order was
 7 issued without further explanation or a media briefing, and states that the Secretary of
 8 Commerce shall identify what transactions are prohibited after 45 days—in effect,
 9 delaying identification of what transactions are prohibited until after such transactions are
 10 already prohibited.⁵

11 5. On September 18, 2020, the Commerce Department released its
 12 “Identification of Prohibited Transactions to Implement Executive Order 13943” (the
 13 “Identification”). The Identification sets forth eleven defined terms and identifies seven
 14 “transactions” to be prohibited pursuant to the Executive Order. On the same day he
 15 issued the Identification, the Secretary admitted on national television that it will “for all
 16 practical purposes” result in WeChat being “shut down in the U.S.” as soon as the
 17 prohibitions take effect.⁶

18 7.6. Neither the Executive Order ~~itself~~ nor the ~~White House~~Identification
 19 provided concrete evidence to support the contention that using WeChat in the United
 20 States compromises national security. Notably, no other nation has implemented a
 21 comprehensive WeChat ban on the basis of any like-finding that WeChat is a threat to
 22
 23

24 ⁵ Ana Swanson, *Trump’s Orders on WeChat and TikTok Are Uncertain. That May Be the*
 25 *Point.*, N.Y. TIMES (Aug. 7, 2020),
 26 [https://www.nytimes.com/2020/08/07/business/economy/trump-executive-order-tiktok-
 wechat.html](https://www.nytimes.com/2020/08/07/business/economy/trump-executive-order-tiktok-wechat.html).

27 ⁶ Megan Henney, *Trump Administration to Ban Americans from Downloading TikTok,*
 28 *WeChat on Sunday*, FOX BUSINESS (Sept. 18, 2020),
[https://www.foxbusiness.com/politics/trump-administration-to-ban-americans-from-
 downloading-tiktok-wechat](https://www.foxbusiness.com/politics/trump-administration-to-ban-americans-from-downloading-tiktok-wechat).

1 national security.⁷ ~~The~~Both the Executive Order ~~was~~and the Identification, however, ~~were~~
 2 issued in the midst of the 2020 election cycle, during a time when President Trump has
 3 made numerous anti-Chinese statements that have contributed to and incited racial animus
 4 against persons of Chinese descent⁸—~~all outside of the~~for reasons that have nothing to do
 5 with national security—~~context.~~

6 ~~8-7.~~ In a stark violation of the First Amendment, the Executive Order ~~targets and~~
 7 ~~silences~~and Identification target and silence WeChat users, the overwhelming majority of
 8 whom are members of the Chinese and Chinese-speaking communities. ~~It regulates~~They
 9 regulate and prohibit constitutionally protected speech, expression, and association—~~and is;~~
 10 in doing so, they are not narrowly tailored to restrict only that speech which presents
 11 national security risks to the United States. ~~Accordingly, it is unconstitutionally~~
 12 ~~overbroad.~~Nor do they leave open ample alternative avenues of communication for
 13 WeChat users. Indeed, banning the use of WeChat in the United States has the effect of
 14 foreclosing all meaningful access to social media for members of the Chinese-speaking
 15 community, such as Plaintiffs, who rely on ~~it~~the app to communicate and interact with
 16 others like themselves. The ban on WeChat, because it substantially burdens the free
 17 exercise of religion, also violates the Religious Freedom Restoration Act.

18 ~~9-8.~~ The Executive Order ~~runs~~and Identification also run afoul of the Fifth
 19 Amendment’s Due Process Clause by failing to provide notice of the specific conduct that
 20 ~~is prohibited; because~~may be identified at a future date by the Secretary. Because of this
 21

22 ⁷ See Maria Abi-Habib, *India Bans Nearly 60 Chinese Apps, Including TikTok and*
 23 *WeChat*, N.Y. TIMES (June 29, 2020, updated on June 30, 2020),
 24 <https://www.nytimes.com/2020/06/29/world/asia/tik-tok-banned-india-china.html> (stating
 that India’s ban is “part of the tit-for-tat retaliation after the Indian and Chinese militaries
 clashed earlier this month.”).

25 ⁸ See, e.g., Nadia Kim, *Asian Americans Suffer From Trump’s Racist Attacks Too*, PUBLIC
 26 SEMINAR (July 23, 2020), [https://publicseminar.org/essays/asian-americans-suffer-from-](https://publicseminar.org/essays/asian-americans-suffer-from-trumps-racist-attacks-too/)
 27 [trumps-racist-attacks-too/](https://www.vox.com/2020/6/23/21300332/trump-coronavirus-racism-asian-americans); Li Zhou, *Trump’s racist references to the coronavirus are his*
 28 *latest effort to stoke xenophobia*, VOX (June 23, 2020),
<https://www.vox.com/2020/6/23/21300332/trump-coronavirus-racism-asian-americans>;
 Matt Stevens, *How Asian-American Leaders Are Grappling With Xenophobia Amid*
Coronavirus, N.Y. TIMES (Mar. 29, 2020, updated on April 10, 2020),
<https://www.nytimes.com/2020/03/29/us/politics/coronavirus-asian-americans.html>.

1 uncertainty, businesses that use WeChat ~~users~~ in the United States are justifiably fearful of
 2 using WeChat in any way and for any purpose—and also of losing access to WeChat.
 3 Since the Executive Order and Identification were issued, numerous users, including
 4 Plaintiffs, have scrambled to seek alternatives without success. ~~They are now afraid that~~
 5 ~~by merely communicating with their families, they may violate the law and face sanctions.~~

6 ~~10.9.~~ WeChat is the only “super-app” with a natively Chinese interface designed
 7 for Chinese speakers. That is one reason why it is the dominant social media and e-
 8 commerce application amongst the global Chinese diaspora, which include Chinese
 9 communities in the United States.⁹ These individuals, particularly those who do not speak
 10 English, are *completely reliant* on WeChat to communicate, socialize, and express
 11 themselves. As such, by prohibiting the use of only WeChat but not any similar
 12 applications (ones not made in China and without Chinese interfaces), the Executive Order
 13 ~~singles and Identification single~~ out people of Chinese and Chinese-American ancestry and
 14 subjects them to disparate treatment on the basis of race, ethnicity, nationality, national
 15 origin, and alienage. In doing so, the Executive Order violates the Equal Protection
 16 Clause.

17 ~~11.10. Finally, in~~ In issuing the Executive Order, ~~the president and Identification,~~
 18 Defendants acted beyond ~~his~~ the authority provided by the International Emergency
 19 Economic Powers Act, which precludes ~~the President~~ Defendants from “*directly or*
 20 *indirectly*” regulating, among other things, personal communications, donations, and the
 21 international exchange of information.

22 11. Finally, the Secretary’s Identification violates the Administrative Procedure
 23 Act (“APA”) because it is in excess of statutory jurisdiction, authority, or limitations, or
 24 short of statutory right, within the meaning of 5 U.S.C. § 706(2)(B), and is arbitrary,
 25 capricious, an abuse of discretion, or otherwise not in accordance with law, within the
 26

27 ⁹ Thuy Ong, *Chinese social media platform WeChat reaches 1 billion accounts worldwide*,
 28 THE VERGE (Mar. 5, 2018), <https://www.theverge.com/2018/3/5/17080546/wechat-chinese-social-media-billion-users-china>.

1 meaning of 5 U.S.C. § 706(2)(A).

2 12. The U.S. WeChat Users Alliance (“USWUA”), Chihuo, Inc., Brent Coulter,
3 Fangyi Duan, Jinneng Bao, Elaine Peng, and Xiao Zhang (collectively, “Plaintiffs”), bring
4 this suit to challenge the Executive Order and Identification, which eviscerates an
5 irreplaceable cultural bridge that connects Plaintiffs to family members, friends, business
6 partners, customers, religious community members, and other individuals with common
7 interests within the Chinese diaspora, located both in and outside of the United States. The
8 Executive Order has and Identification have already harmed Plaintiffs, who ~~are plagued~~
9 ~~with~~ fear for the loss of their beloved connections, whether it be with friends, family,
10 community, customers, aid recipients of the charities they run, or even strangers whose
11 ideas enrich their lives. They have been forced to divert time, energy, and money to seek
12 alternative communication platforms, download and save irreplaceable digital histories,
13 plan for business closures, find other sources of information, and try to obtain alternative
14 contact information for those from whom they will soon be separated.

15 13. Even if they succeed to some extent in their mitigation efforts, Plaintiffs will
16 never be able to replace the full spectrum of the social interactivity that WeChat offers, nor
17 will they be able to find any social networking platform with anything close to the same
18 level of participation by the global Chinese diaspora—~~this~~. This is because WeChat’s
19 network effects, generated by its 1 billion-plus daily users, ~~is~~ are irreplaceable.

20 14. In short, the threatened displacement of these WeChat users from their public
21 space is an irreparable harm that requires judicial intervention.

22 15. For these reasons, and those discussed below, the Court should (1) declare
23 that the Executive Order and the ~~Secretary of Commerce’s September 18, 2020,~~
24 ~~Identification of Prohibited Transactions~~ are unlawful and unconstitutional; and (2) enjoin
25 Defendants from enforcing the Executive Order or the Secretary’s Identification to
26 regulate or prohibit the use of WeChat in the United States, directly or indirectly.

27 JURISDICTION AND VENUE

28 16. The claims asserted herein arise under and pursuant to the Constitution and

1 laws of the United States. This Court has jurisdiction over the subject matter of this action
2 pursuant to 28 U.S.C. § 1331.

3 17. An actual, present, and justiciable controversy exists between the parties
4 within the meaning of 28 U.S.C. § 2201(a).

5 18. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28
6 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and
7 by the general legal and equitable powers of this Court.

8 19. Venue is proper in this District pursuant to 28 U.S.C. §§ 2201 and 1391
9 (e)(1) because Defendant are officers of the United States acting in their official capacities
10 and (1) at least one plaintiff resides in this district; and (2) a substantial part of the events
11 or omissions giving rise to the claim occurred in this district. For the same reason,
12 intradistrict assignment is proper in the San Francisco Division. *See* N.D. Cal. L.R. 3-2.

13 **PARTIES**

14 20. Plaintiff U.S. WeChat Users Alliance ("USWUA") is a New Jersey nonprofit
15 organization that is in the process of being registered under Internal Revenue Code section
16 501(c)(3), established by individuals in the United States for the purpose of opposing the
17 Executive Order. Plaintiff USWUA is made up of WeChat users located throughout the
18 United States who are not affiliated with WeChat, its parent company Tencent Holdings
19 Ltd. ("Tencent"), nor any political party or foreign government. Plaintiff USWUA runs on
20 public donations from WeChat users and organizes its efforts on WeChat. Plaintiff
21 USWUA is made up of individuals who want to continue using WeChat within the United
22 States and are currently suffering and will continue to suffer an injury based on the
23 Defendants' actions.

24 21. Plaintiff Elaine Peng is a United States citizen residing in Castro Valley,
25 California. Plaintiff Peng founded the Mental Health Association for Chinese
26 Communities ("MHACC") in 2013 to provide mental health education, suicide prevention,
27 assistance, and other resources to her local Chinese community that is underserved by the
28 mental health profession due to language and cultural barriers. As president of MHACC,

1 Plaintiff Peng strives to make mental health programs available to those in need and has
2 received multiple awards for her work. Like much of the Chinese population in the United
3 States, Plaintiff Peng uses WeChat as her exclusive means to connect with her Chinese
4 families and friends, domestic or abroad. As most of the population MHACC serves relies
5 on WeChat to communicate, use of WeChat is also integral to MHACC's mission to
6 provide mental health services and support to its members.

7 22. Plaintiff Brent Coulter is a United States citizen and WeChat user. Plaintiff
8 Coulter holds a Juris Doctor from the University of California, Hastings College of the
9 Law ("Hastings"), and lives in San Francisco, California. Plaintiff Coulter previously
10 lived in China for approximately five years, where he studied at Sichuan University and
11 worked in marketing. While in China, Plaintiff Coulter used WeChat as his main method
12 of communication to connect with friends and professional contacts. Now in the U.S., one
13 of Plaintiff Coulter's professional goals is to bridge the gap between China and the U.S.
14 with regard to law and business. At Hastings, Plaintiff Coulter founded the Asian Law and
15 Business Association, through which he formed a partnership with the American Chamber
16 of Commerce ("AmCham") in Southwest China. Each year, Plaintiff Coulter drafts two
17 chapters of AmCham's annual white paper on U.S. business in China with his colleagues
18 in both countries. WeChat is central to Plaintiff Coulter's annual collaboration and
19 remains the only way for him to connect with many of his professional contacts and
20 friends in China. Plaintiff Coulter relies on WeChat to build upon his professional career
21 which straddles law and business in the U.S. and China. Without WeChat, Plaintiff
22 Coulter would lose access to many of the relationships that he has built throughout his
23 studies and career.

24 23. Plaintiff Xiao Zhang is a Chinese citizen with a valid visa residing in
25 Houston, Texas. She is employed as an engineer and founded a nonprofit organization
26 known as Hita Education Foundation that supports underserved students at the high school
27 in her hometown in China. Plaintiff Zhang uses WeChat to speak with administrators,
28 teachers, parents of school children, and to help identify underserved Chinese students who

1 would benefit from the program. Plaintiff Zhang’s nonprofit organization currently sends
2 donations of 300 yuan (approximately \$43 dollars) to seven students per month to pay for
3 meals and school supplies. Plaintiff Zhang also uses WeChat to transfer the funds to each
4 individual student, and WeChat is her exclusive means to connect with her Chinese-
5 speaking family members and friends, domestic or abroad.

6 24. Plaintiff Fangyi “Amy” Duan is a Chinese citizen with a valid visa, and
7 resides in Santa Clara, California. Plaintiff Duan is employed as the chief executive
8 officer of Plaintiff Chihuo, Inc. (“Chihuo”), a corporation that is dually registered in both
9 California and Delaware.

10 25. Plaintiff Chihuo is a media and online retailer that creates content regarding
11 Chinese restaurants and cuisine for people residing in the United States. Plaintiff Chihuo
12 provides U.S. based merchants an e-commerce platform for targeting Chinese-speaking
13 consumers. Plaintiff Chihuo serves its customers by providing targeted marketing and
14 advertising services online. Plaintiff Chihuo delivers its targeted advertising and
15 marketing services primarily on several WeChat official accounts through ~~it~~the app’s
16 various functions, including WeChat Moments. Plaintiff Chihuo employs or contracts
17 with approximately thirty people as part of its business. Plaintiff Chihuo’s WeChat
18 accounts cover 14 major metropolitan areas in the United States and are enjoyed by more
19 than 640,000 readers.

20 26. Plaintiff Jinneng Bao is a United States permanent resident and lives in
21 Nassau County, New York. He is self-employed and runs several businesses including a
22 construction company primarily serving Chinese-speaking clients in New York. Plaintiff
23 Bao actively attends a Chinese church in New York and participates in Bible studies
24 regularly on WeChat. His Bible study group consists of mostly Chinese-speaking
25 members. Due to the pandemic, Plaintiff Bao’s Bible study group has stopped meeting in
26 person, and WeChat is the only way the group currently maintains communications with
27 one another.

28 27. Defendant Donald J. Trump (“President Trump”) is the President of the

1 United States. He is sued in his official capacity. In that capacity, he issued the Executive
 2 Order challenged in this suit and authorized the issuance of the Identification challenged in
 3 this suit.

4 28. Defendant Wilbur Ross (“Secretary Ross”) is the United States Secretary of
 5 Commerce. He is sued in his official capacity. In the Executive Order, the Secretary is
 6 authorized to take actions, including adopting rules and regulations, to implement the
 7 Executive Order. The Secretary exercised this authority on September 18, 2020, when he
 8 issued the Identification prohibiting various transactions related to WeChat.

9 FACTUAL ALLEGATIONS

10 A. WeChat ~~and App~~ Capabilities

11 29. WeChat is one of the most popular messaging applications in the world, with
 12 a monthly user base of more than 1 billion people.¹⁰ Nearly every person in China with an
 13 online presence has at least one WeChat account, and over one-third of them spend four
 14 hours or more on the app every day—making WeChat an indispensable part of many
 15 peoples’ lives and work.¹¹

16 30. Though WeChat began as a messaging service, it is now a “super-app” that
 17 serves a multitude of communicative needs, including making telephone calls, video
 18 conferencing, sharing photos, commenting on other users’ posts, making payments, and
 19 still other purposes.¹²

20 31. One of WeChat’s primary uses is the app’s messaging capabilities, which
 21 include both text and voice messaging. Messaging through WeChat is the preferred
 22

23 ¹⁰ Arjun Kharpal, Everything you need to know about WeChat—China’s billion-user
 24 messaging app, CNBC (Feb. 3, 2019), <https://www.cnbc.com/2019/02/04/what-is-wechat-china-biggest-messaging-app.html>.

25 ¹¹ Li Yuan, To Cover China, There’s No Substitute for WeChat, N.Y. TIMES (Jan. 9,
 26 2019), <https://www.nytimes.com/2019/01/09/technology/personaltech/china-wechat.html>

27 ¹² Bani Sapra, *This Chinese super-app is Apple’s biggest threat in China and could be a*
 28 *blueprint for Facebook’s future. Here’s what it’s like to use WeChat, which helps a billion*
users order food and hail rides, BUSINESS INSIDER (Dec. 21, 2019),
<https://www.businessinsider.com/chinese-superapp-wechat-best-feature-walkthrough-2019-12>.

1 method of communication in China, even when doing business. Through the app’s
 2 messaging capabilities, users can have numerous ongoing conversations at one time, and
 3 can also set up group texts within a family, a business, or among friends, to communicate
 4 with the whole group simultaneously.

5 32. WeChat also has capabilities to make voice and video calls. WeChat users
 6 often choose to make voice calls within the app rather than through their cellular telephone
 7 provider because it is more convenient. Group voice conference calls and video chats—
 8 comparable to Zoom video group calls—can also be easily made on WeChat.

9 33. WeChat includes a feature called “Moments” through which users can
 10 upload photos, videos, share news articles, and compose text. WeChat users can comment
 11 on or like ~~the post~~posts, similar to the capabilities of apps like Facebook or Instagram.

12 34. WeChat also supports many integrated services, such as banking and ride-
 13 sharing, so that users do not need to use a separate app to get those services. Some
 14 companies have launched “mini-programs” within WeChat instead of standalone apps,
 15 making it more convenient for WeChat users to use their services.

16 35. WeChat has increasingly been adopted by older age groups in China,
 17 including a significant percentage of those over 60.¹³ Even older users in their 70s use
 18 WeChat at high levels for messaging, voice calls, reading articles, and making payments.¹⁴

19 **B. WeChat Usage ~~Specifically~~ in the United States**

20 36. There are approximately 19 million daily active WeChat users in the United
 21 States.¹⁵ WeChat is very widely used ~~within the Chinese American community, which is~~
 22 ~~estimated to be four to five million people~~among Chinese speakers in the United States,

23 _____
 24 ¹³ Clark Boyd, *The Silver Lining: WeChat and China’s Over-60s*, MEDIUM (Sept. 3, 2020),
<https://medium.com/swlh/the-silver-lining-wechat-and-chinas-over-60s-168b193fb516>.

25 ¹⁴ Mansoor Iqbal, *WeChat Revenue and Usage Statistics*, BUSINESS OF APPS (updated
 26 July 30, 2020), <https://www.businessofapps.com/data/wechat-statistics/>.

27 ¹⁵ Krystal Hu, *WeChat U.S. ban cuts off users link to families in China*, REUTERS (Aug. 7,
 28 2020), <https://www.reuters.com/article/us-usa-tencent-holdings-wechat-ban/wechat-us-ban-cuts-off-users-link-to-families-in-china-idUSKCN253339#:~:text=In%20the%20past%20three%20months,according%20to%20analytics%20firms%20Apptopia>.

1 many of whom do not own personal computers and rely on the WeChat mobile app to
 2 communicate.¹⁶ WeChat is the dominant method for anyone in the United States who
 3 regularly communicates with people in China because it is free, is more convenient, and
 4 has better reception than traditional telephone calls. WeChat is used in the United States
 5 not only to keep in touch with friends and family, but also academics, professionals, and
 6 business people to discuss matters of professional importance.

7 37. In the United States, the vast majority of the Chinese-speaking population ~~is~~
 8 ~~enables~~ WeChat, creating network ~~-~~effects that encourage others to join and participate lest
 9 they be cut off entirely from family, friends, and business circles.¹⁷ Almost all Chinese-
 10 speaking immigrants who have come to the United States since 2011 brought their WeChat
 11 accounts with them from China, where they built extensive networks of contacts prior to
 12 immigrating. In order to maintain their networks among the Chinese-speaking community,
 13 these individuals need to continue using WeChat rather than mainstream Western social
 14 media platforms such as Facebook, WhatsApp, or Twitter. This is because all of these
 15 platforms—and many others used in the United States—are not available in China. This is
 16 also true for Chinese-speaking immigrants who came to the United States before 2011 and
 17 now depend on WeChat to maintain connections with contacts in both the United States
 18 and in China. Simply put, WeChat is irreplaceable because no other app has anywhere
 19 near the same number of users and engagement among the Chinese-speaking community
 20 ~~in the United States,~~ both in the United States and abroad. If WeChat were banned in the
 21 United States, Plaintiffs' WeChat networks would not simply migrate to another
 22 platform—they would evaporate.

23 38. The WeChat mobile app in particular has become an essential part of
 24

25 _____
 26 ¹⁶ Gustavo Lopez, Neil G. Ruiz, and Eileen Patten, *Key facts about Asian Americans, a*
diverse and growing population, PEW RESEARCH CENTER (Sept. 8, 2017),
<https://www.pewresearch.org/fact-tank/2017/09/08/key-facts-about-asian-americans/>.

27 ¹⁷ Mohit Mittal, *WeChat—The One App That Rules Them All*, HARVARD BUSINESS
 28 SCHOOL DIGITAL INITIATIVE (Aug. 25, 2017), <https://digital.hbs.edu/innovation-disruption/wechat%E2%80%8A-%E2%80%8Athe-one-app-rules/>.

1 Chinese and Chinese-American life in the United States. The vast majority of WeChat
 2 users in the United States use the app through their mobile phones. Many WeChat users in
 3 the United States do not own personal computers, and rely exclusively on the WeChat
 4 mobile app to maintain contact with their personal, professional, political, and religious
 5 communities. Even those users who do own a personal computer depend on the
 6 availability of the WeChat mobile app, because so many of the people with whom they
 7 communicate—even those located in the United States—rely on their mobile phones to
 8 access and use WeChat.

9 38-39. WeChat users in the United States use the app to communicate within
 10 Chinese-American communities in the United States and with Chinese speakers throughout
 11 the world. Without access to WeChat, users in the United States will be cut off from their
 12 cultural community in the U.S. and will lose the main line of communication they have
 13 with ~~the rest of their~~ family and friends thousands of miles away. Plaintiffs Peng, Zhang,
 14 Bao, and Fang all use WeChat regularly while living in the United States to ~~regularly~~
 15 communicate with their aging parents or other family members who reside in China.

16 39-40. The importance of WeChat to Chinese Americans cannot be overstated
 17 because a significant portion of these individuals speak little or no English. According to a
 18 study by the Pew Research Center, 41% of the Chinese population in the United States are
 19 not English proficient.¹⁸ Accordingly, a blanket prohibition on WeChat means that
 20 millions of individuals in the United States will be unable to find a comparable substitute
 21 on apps such as Facebook, which are designed for English-speaking users and primarily
 22 have English-speaking user networks within the United States.

23 40-41. WeChat users in the United States use the app to engage in, organize, and
 24 publicize religious and cultural practices. For instance, various churches with primarily
 25
 26

27 ¹⁸ *English proficiency of Chinese population in the U.S.*, PEW RESEARCH CENTER (July 6,
 28 2017), <https://www.pewsocialtrends.org/chart/english-proficiency-of-chinese-population-in-the-u-s/>.

1 Chinese congregants have WeChat profiles and stream their services online.¹⁹ The Church
 2 of Jesus Christ of Latter-Day Saints uses WeChat to reach Chinese-American members
 3 and potential congregants within China.²⁰ WeChat users in the United States attend and
 4 participate in religious services or events, such as funerals, weddings, or other gatherings
 5 through the app. Plaintiff Jinneng Bao relies on WeChat exclusively to attend regular
 6 Bible studies hosted by his Chinese church in New York. WeChat users in the United
 7 States organize and celebrate various religious and cultural holidays through their activity
 8 in WeChat groups. They post Moments about holidays such as the Chinese New Year, the
 9 Mid-Autumn Moon Festival, Ching Ming Festival (when Chinese people around the world
 10 visit the tombs of their departed loved ones), and the Duan Wu Festival (popularly known
 11 in the U.S. as the day when Chinese communities host dragon boat races). Because events,
 12 educational or celebratory, are frequently discussed and transmitted through social
 13 networks on WeChat, users rely on WeChat to learn about and celebrate religious and
 14 cultural events with their community members online.

15 41-42. In the United States, WeChat users organize around political causes through
 16 WeChatthe app. For instance, many WeChat groups were used to organize, campaign, and
 17 raise funds in the 2016 presidential election, and users in the United States have similarly
 18 used WeChat to support candidates in the 2020 presidential election cycle.²¹ Plaintiff Peng
 19

20 ¹⁹ Feng Long, *Leveraging Tech for Chinese Evangelism*, SIERRAPACIFIC (May 15, 2020),
 21 <https://www.undeniableblessing.org/blog/Leveraging-Tech-for-Chinese-Evangelism>
 22 (Oakland pastor who uses WeChat); MID-HUDSON CHINESE CHRISTIAN CHURCH (NY),
 23 <https://www.mhccc.org/> (last visited Aug. 20, 2020); BRENTWOOD BAPTIST CHURCH (TN)
 24 <https://brentwoodbaptist.com/chinese/> (last visited Aug. 20, 2020).

25 ²⁰ THE CHURCH OF JESUS CHRIST OF LATTER-DAY-SAINTS IN CHINA,
 26 <https://www.churchofjesuschrist.org/China> (last visited Aug. 20, 2020) (*see* Frequently
 27 Asked Questions by Church Leaders, Can Church leaders/members outside China keep in
 28 touch with Chinese members baptized in their brand/ward after those Chinese members
 return to China? Email? WeChat? Letters?); James Griffiths, *This US Church with
 Expansion in its DNA Wants to Open a Temple in China*, CNN (Hong Kong) (Jun. 11,
 2020, [https://www.cnn.com/2020/06/06/asia/mormon-church-latter-day-saints-china-intl-
 hnk/index.html](https://www.cnn.com/2020/06/06/asia/mormon-church-latter-day-saints-china-intl-hnk/index.html)).

²¹ See Wanning Sun, *Why Trump's WeChat ban does not make sense—and could actually
 cost him Chinese votes*, THE CONVERSATION (Aug. 10, 2020),
[https://theconversation.com/why-trumps-wechat-ban-does-not-make-sense-and-could-
 actually-cost-him-chinese-votes-144207](https://theconversation.com/why-trumps-wechat-ban-does-not-make-sense-and-could-actually-cost-him-chinese-votes-144207).

1 is an active member of several WeChat groups that discuss issues pertaining to the U.S.
 2 2020 election and publish information on how to become a registered voter. Asian-
 3 Americans who organized to oppose a Democrat-backed ballot initiative in California,
 4 which would have reversed the state's ban on race-conscious admissions, did so primarily
 5 through WeChat.²² Organizations and causes wanting to reach Chinese -Americans use
 6 WeChat groups to raise awareness about demonstrations, spread voter education materials,
 7 and campaign for various candidates.

8 42-43. WeChat is integral for the spread of current events and news within Chinese
 9 communities. WeChat users rely on the app to read about current events and the news,
 10 including in media from the United States, China, and around the world. Plaintiffs Zhang
 11 and Peng frequently use WeChat to read, share, receive, and respond to news items that
 12 their WeChat contacts post to their Moments. Plaintiffs then comment, like, and share
 13 various news items that they receive from their WeChat contacts. Journalists who cover
 14 issues pertaining to China and Chinese communities rely on WeChat to investigate issues
 15 and communicate with people to interview. Large Chinese-language newspapers in the
 16 U.S., such as *Sing Tao Daily* and *World Journal*, publish news stories through their
 17 WeChat accounts.

18 43-44. Government entities in areas with significant numbers of Chinese
 19 immigrants or Chinese Americans use WeChat as a method of communicating with their
 20 constituents. For instance, the police department in Alhambra, California began using
 21 WeChat in 2015 to provide updates about local law enforcement efforts.²³ The cities of
 22

23
 24 ²² Alia Wong, *The App at the Heart of the Movement to End Affirmative Action*, THE
 ATLANTIC (Nov. 20, 2018), <https://www.theatlantic.com/education/archive/2018/11/asian-americans-wechat-war-affirmative-action/576328/>.

25 ²³ Ashley Fan, *Some San Gabriel Valley Communities Could Be Seriously Affected by*
 26 *Trump's WeChat Ban*, SAN GABRIEL VALLEY TRIB. (Aug. 10, 2020),
 27 <https://www.sgvtribune.com/2020/08/10/how-trumps-wechat-ban-could-disrupt-life-in-the-san-gabriel-valley/>; Josie Huang, *Alhambra Police Use WeChat as Bridge to Chinese*
 28 *Immigrants*, KPCC (Jan. 20, 2015),
<https://www.scpr.org/blogs/multiamerican/2015/01/20/17819/alhambra-police-join-wechat-to-chinese/>.

1 Arcadia, San Gabriel, and Monterey Park in California have official WeChat accounts,
 2 which allow them to communicate with Chinese-speaking populations in their own
 3 language.²⁴ Local governments have used WeChat messaging as a way to send emergency
 4 notifications and provide public notice for local governance proposals.

5 44-45. During the COVID-19 pandemic, WeChat users have relied even more on
 6 the app to communicate and organize within their communities. In February 2020,
 7 volunteers in the Bay Area used WeChat to organize and send medical supplies to Wuhan,
 8 China at the start of the worldwide pandemic.²⁵ As travel restrictions emerged in the
 9 United States, WeChat users relied on the app in order to communicate with family
 10 members that they cannot visit in person in their home towns, in other areas of the United
 11 States, and around the world. People in the United States use the app to visit with elderly
 12 loved ones in nursing homes and hospitals, as well as with COVID-19 patients, who
 13 cannot be visited in person due to pandemic-related restrictions. Information about the
 14 pandemic, including regarding COVID-19 testing, prevention methods, and government
 15 responses to the pandemic, are broadly shared and discussed in the United States through
 16 WeChat groups and posts. For instance, a local police department in California posted
 17 information about times and locations for drive-up and walk-up COVID-19 testing on its
 18 WeChat profile. Similarly, doctors used WeChat extensively to spread information on the
 19 prevention of COVID-19 in the Chinese communities in Sacramento, California.²⁶

21 ²⁴ Ashley Fan, *Some San Gabriel Valley Communities Could Be Seriously Affected by*
 22 *Trump's WeChat Ban*, SAN GABRIEL VALLEY TRIB. (Aug. 10, 2020),
 23 [https://www.sgvtribune.com/2020/08/10/how-trumps-wechat-ban-could-disrupt-life-in-](https://www.sgvtribune.com/2020/08/10/how-trumps-wechat-ban-could-disrupt-life-in-the-san-gabriel-valley/)
 24 [the-san-gabriel-valley/](https://www.sgvtribune.com/2020/08/10/how-trumps-wechat-ban-could-disrupt-life-in-the-san-gabriel-valley/); Christopher Yee, *How this 32-year-old Interpreter Became*
 25 *Alhambra's Weibo, WeChat Guru*, SAN GABRIEL VALLEY TRIB. (Jul. 14, 2016, updated
 26 Aug. 30, 2017), [https://www.sgvtribune.com/2016/07/14/how-this-32-year-old-interpreter-](https://www.sgvtribune.com/2016/07/14/how-this-32-year-old-interpreter-became-alhambras-weibo-wechat-guru/)
 27 [became-alhambras-weibo-wechat-guru/](https://www.sgvtribune.com/2016/07/14/how-this-32-year-old-interpreter-became-alhambras-weibo-wechat-guru/).

25 ²⁵ Devin Katayama, Ericka Cruz Guevarra & Alan Montecillo, “*That’s Where I Grew*
 26 *Up’: The Wuhan Natives Organizing Aid from the Bay*, KQED (Feb. 19, 2020),
 27 [https://www.kqed.org/news/11802206/thats-where-i-grew-up-the-wuhan-natives-](https://www.kqed.org/news/11802206/thats-where-i-grew-up-the-wuhan-natives-organizing-aid-from-the-bay)
 28 [organizing-aid-from-the-bay](https://www.kqed.org/news/11802206/thats-where-i-grew-up-the-wuhan-natives-organizing-aid-from-the-bay).

26 ²⁶ Theodora Yu, *To Combat Coronavirus, These Doctors Are Helping Sacramento’s*
 27 *Chinese Community on WeChat*, SAC. BEE (Feb. 27, 2020), [https://www.sacbee.com/latest-](https://www.sacbee.com/latest-news/article240662256.html)
 28 [news/article240662256.html](https://www.sacbee.com/latest-news/article240662256.html).

1 Organizations, such as Plaintiff Peng’s MHACC, make vital mental health programs
 2 available to their communities through WeChat, in a world where people are struggling
 3 with the long-term isolation associated with the pandemic.

4 ~~PRESIDENT TRUMP’S DEFENDANTS’ EXECUTIVE ORDERS AND~~
 5 ~~EMERGENCY DECLARATION~~
 6 ~~IMPLEMENTING REGULATIONS~~

7 **A. Executive Order 13873**

8 ~~45.46.~~ Prior to the issuance of the Executive Order challenged by this lawsuit, on
 9 May 15, 2019, President Trump issued Executive Order 13873, titled “Securing the
 10 Information and Communications Technology Services Supply Chain.” 84 ~~FR~~Fed. Reg.
 11 22689 (May 15, 2019). Executive Order 13873 declares a national emergency with respect
 12 to the threat posed by unidentified “vulnerabilities in information and communications
 13 technology and services[.]”

14 ~~46.47.~~ According to this Order, these unidentified vulnerabilities constitute an
 15 “unusual and extraordinary threat to the national security, foreign policy, and economy of
 16 the United States,” due in part to the “unrestricted acquisition or use in the United States of
 17 information and communications technology or services designed, developed,
 18 manufactured, or supplied by persons owned by, controlled by, or subject to the
 19 jurisdiction of foreign adversaries[.]” The threat, according to the May 15, 2019 Order,
 20 “exists both in the case of individual acquisitions or uses of such technology or services,
 21 and when acquisitions or uses of such technologies are considered as a class.” Executive
 22 Order 13873 does not identify specific countries or companies that pose a national security
 23 threat.

24 ~~48.~~ Under the National Emergencies Act, this national emergency would have
 25 terminated automatically after one year unless the President renewed it before that
 26 termination. See 50 U.S.C. § 1622(d). President Trump extended Executive Order 13873
 27 for another year on May 13, 2020. See 85 Fed. Reg. 29321 (May 13, 2020). In his notice
 28 of the extension, the President provided no explanation for why the national emergency
“must continue” other than a conclusory assertion that the threat identified in his original

1 emergency declaration “continues to pose an unusual and extraordinary threat to the
 2 national security, foreign policy, and economy of the United States.” *Id.*

3 **B. Executive Order 13943**

4 ~~47-49.~~ More than fourteen months ~~later, on August 6, 2020~~after the President
 5 declared this national emergency, President Trump issued Executive Order 13943, titled
 6 “Addressing the Threat Posed by WeChat, and Taking Additional Steps to Address the
 7 National Emergency with Respect to the Information and Communications Technology
 8 and Services Supply Chain.” 85 ~~FR~~Fed. Reg. 48641 (Aug. 6, 2020). Executive Order
 9 13943 states that WeChat “automatically captures vast swaths of information from its
 10 users,” and that the data collected by WeChat “threatens to allow the Chinese Communist
 11 Party access to Americans’ personal and proprietary information.” According to ~~this~~the
 12 Executive Order, the data collected by WeChat also “captures the personal and proprietary
 13 information of Chinese nationals visiting the United states, thereby allowing the Chinese
 14 Communist Party a mechanism for keeping tabs on Chinese citizens who may be enjoying
 15 the benefits of a free society for the first time in their lives.” The Executive Order also
 16 warns that WeChat “may also be used for disinformation campaigns that benefit the
 17 Chinese Communist Party.”

18 ~~48-50.~~ Executive Order 13943 does not declare a new national emergency. Rather,
 19 it asserts that the “threat” posed by WeChat is “similar to” the threat posed by other
 20 Chinese-owned technology companies, such as TikTok, which the President took action
 21 against pursuant to his purported emergency powers under the International Emergency
 22 Economic Powers Act (“IEEPA”). *See* Executive Order 13942, 85 ~~FR~~Fed. Reg. 48637
 23 (Aug. 6, 2020). The Executive Orders regulating WeChat and TikTok—both issued on the
 24 same day—rely on powers purportedly made available by the national emergency declared
 25 in Executive Order 13873, issued over a year earlier on May 15, 2019.

26 ~~49-51.~~ Several sections of Executive Order 13943 purport to alter the legal rights
 27 and obligations of private parties. Section 1(a) states that “any transaction that is related to
 28 WeChat by any person” will be “prohibited beginning 45 days after the date of this

1 order[.]” Section 1(a) further prohibits, beginning 45 days from the date of the Order,
 2 transactions with Tencent, WeChat’s parent company, and any subsidiaries of Tencent that
 3 are “identified by the Secretary of Commerce[.]” Section 2(a) states that “[a]ny
 4 transaction... that evades or avoids, has the purpose of evading or avoiding, causes a
 5 violation of, or attempts to violate the prohibition set forth in this order is prohibited.”
 6 Section 2(b) further prohibits “[a]ny conspiracy formed to violate any of the prohibitions
 7 set forth in this order.” Section 3 purports to strip persons subject to the prohibitions in
 8 Sections 1(a) and 2 of any right to notice of the specific conduct being prohibited.

9 ~~50-52.~~ Executive Order 13943, by its terms, ~~may apply~~applies not only to WeChat,
 10 and its parent company Tencent, but also to the millions of American individuals, groups,
 11 businesses, organizations, churches and government agencies, that use WeChat every day
 12 to communicate, learn, speak, read, publish, organize, advertise, run a business, and meet
 13 friends and family in their personal, professional and business lives. While “transaction”
 14 is not defined in the Executive Order, it does make clear that it applies to “any United
 15 States citizen, permanent resident alien, entity organized under the laws of the United
 16 States or any jurisdiction within the United States (including foreign branches), or any
 17 person in the United States.” *Id.* § 4(c). And “entity” is further defined to mean a
 18 government or instrumentality of such government, partnership, association, trust, venture,
 19 corporation, group, subgroup, or other organization, including an international
 20 organization.” *Id.* § 4(b).

21 ~~51-53.~~ Two other sections of Executive Order 13943 direct the Secretary of
 22 Commerce to take additional action: Section 1(c) directs the Secretary, within 45 days of
 23 August 6, to “identify the transactions subject to subsection [1](a).” Section 5 authorizes
 24 the Secretary to “take such actions, including adopting rules and regulations, and to
 25 employ all powers granted to me by IEEPA as may be necessary to implement this order.”
 26 The Executive Order specifically mentions the popular use of WeChat to pay for purchases
 27 or to transfer money or to accept or make payments for their businesses from or to another
 28 user, as the basis to relieve the Secretary of Commerce of any responsibility to give “prior

1 notice” to them “of measures to be taken” because advance notice “would render those
2 measures ineffectual.” *Id.* § 3. It is unclear whether this section permits the Secretary to
3 freeze or seize monies belonging to WeChat users in the U.S. without notice.

4 ~~52.54.~~ Under the Executive Order, WeChat users who engage in a prohibited
5 transaction may be prosecuted under the IEEPA, which provides for civil penalties of
6 \$250,000 or twice the amount of the transaction at issue, and criminal penalties of up to \$1
7 million plus 20 years in prison. *See* 50 U.S.C. § 1705(b)-(c).

8 **C. The Secretary of Commerce Identifies the Commerce’s Identification of**
9 **Prohibited Transactions Prohibited by EO, and Intent to Ban WeChat**

10 ~~53.55.~~ On September 18, 2020, the Commerce Department released its
11 “Identification of Prohibited Transactions to Implement Executive Order 13943” (the
12 “Identification”).

13 ~~54.56.~~ ~~On September 18, 2020, the Commerce Department released its~~
14 ~~“Identification of Prohibited Transactions to Implement Executive Order 13943” (the~~
15 ~~“Identification”).~~ The Identification sets forth eleven defined terms and identifies seven
16 “transactions” to be prohibited pursuant to the Executive Order.

17 ~~55.57.~~ For example, the Identification defines “person” as “an individual or entity.”

18 ~~56.58.~~ The Identification also defines “Transaction” to mean “any acquisition,
19 importation, transfer, installation, dealing in, or use of any information and
20 communications technology or service.”

21 ~~57.59.~~ It then The Identification states that the following transactions are prohibited
22 by ~~EO~~ Executive Order 13943 ~~include, inter alia:~~

23 a. “1. Any provision of services to distribute or maintain the WeChat
24 mobile application, constituent code, or mobile application updates through an online
25 mobile application store, or any online marketplace where mobile users within the land or
26 maritime borders of the United States and its territories may download or update
27 applications for use on their mobile devices.””;

28 b. “2. Any provision of internet hosting services enabling the

1 functioning or optimization of the WeChat mobile application, within the land and
 2 maritime borders of the United States and its territories.”;

3 e. ~~“Any provision of content delivery services enabling the functioning
 4 or optimization of the WeChat mobile application, within the land and maritime borders of
 5 the United States and its territories.”~~

6 ~~d.c. “3. Any provision of content delivery services enabling the
 7 functioning or optimization of the WeChat mobile application, within the land and
 8 maritime borders of the United States and its territories.”;~~

9 ~~d. “4. Any provision of directly contracted or arranged internet transit
 10 or peering services enabling the functioning or optimization of the WeChat mobile
 11 application, within the land and maritime borders of the United States and its territories;~~

12 ~~e. “5. Any provision of services through the WeChat mobile application
 13 for the purpose of transferring funds or processing payments to or from parties within the
 14 land or maritime borders of the United States and its territories;~~

15 ~~f. “6. Any utilization of the WeChat mobile application’s constituent
 16 code, functions, or services in the functioning of software or services developed and/or
 17 accessible within the land and maritime borders of the United States and its territories; or~~

18 ~~e.g. “7. Any other transaction that is related to WeChat by any person, or
 19 with respect to any property, subject to the jurisdiction of the United States, with Tencent
 20 Holdings Ltd., or any subsidiary of that entity, as may be identified at a future date under
 21 the authority delegated under Executive Order 13943.”~~

22 ~~58-60.~~ In short, the Identification sets forth a de facto ban of WeChat in the United
 23 States.

24 ~~59-61.~~ On September 18, 2020, multiple Administration officials confirmed the
 25 purpose and intent of the Identification as being the eventual, complete prohibition of any
 26 use of WeChat in the United States.

27 ~~60-62.~~ For example, on September 18, 2020, Secretary of Commerce Wilbur Ross
 28 stated on Fox Business News that ~~“WeChat is essentially a funds transfer and payment~~

1 ~~processing mechanism.~~ For all practical purposes, ~~it~~[WeChat] will be shut down in the
 2 U.S., but only in the U.S. as of midnight on Monday by the Commerce Department rule.”²⁷

3 ~~61-63.~~ Mr. Ross also stated~~t~~ that “WeChat is essentially a funds transfer and
 4 payment processing mechanism.” This is incorrect, as several of WeChat’s most important
 5 functions involve social networking and other communications, both in China and in the
 6 United States. The version of WeChat that is accessible in the United States does not
 7 allow users to transfer funds unless both parties to the transaction already have Chinese
 8 bank accounts.

9 ~~62-64.~~ The Secretary’s mischaracterization demonstrates the government’s lack of
 10 investigation and understanding of the software that it has now banned.

11 ~~63-65.~~ In a televised interview on Friday, September 18, 2020, the Secretary of
 12 Commerce stated that it “is our *fear*” that WeChat is “taking data from the American
 13 public and sending it to China.” But the Secretary provided no examples of “data” being
 14 “sen[t]... to China” or how the mere transmission of “data” to China constitutes a
 15 national security threat.²⁸

16 ~~64-66.~~ Also on September 18, 2020, a separate statement from an anonymous
 17 “senior Commerce official” to a reporter for the technology publication CNET appears to
 18 confirm that the Administration has no evidence whatsoever of private data being
 19 harvested by WeChat in the United States. “Whether we have any evidence, domestically,
 20 of these particular apps taking data is missing the point,” according to this official,
 21 because the Administration “know[s] what the Chinese government’s intent is here in the
 22 United States.”²⁹

24 ²⁷ ~~Available at: <https://video.foxbusiness.com/v/6192199311001/#sp=show-clips> Megan~~
 25 ~~[Henney, Trump Administration to Ban Americans from Downloading TikTok, WeChat on](https://www.foxbusiness.com/politics/trump-administration-to-ban-americans-from-downloading-tiktok-wechat)~~
 26 ~~[Sunday, FOX BUSINESS \(Sept. 18, 2020\), https://www.foxbusiness.com/politics/trump-](https://www.foxbusiness.com/politics/trump-administration-to-ban-americans-from-downloading-tiktok-wechat)~~
 27 ~~[administration-to-ban-americans-from-downloading-tiktok-wechat.](https://www.foxbusiness.com/politics/trump-administration-to-ban-americans-from-downloading-tiktok-wechat)~~

28 ²⁸ ~~Available at: <https://video.foxbusiness.com/v/6192199311001/#sp=show-clips>. *Id.*~~

29 ²⁹ September 18, 2020 CNET article titled “TiekTok, WeChat downloads will be barred
 28 from US starting Sunday,” Available at: [https://www.cnet.com/news/tiktok-wechat-](https://www.cnet.com/news/tiktok-wechat-downloads-will-be-barred-from-us-starting-sunday)
[downloads-will-be-barred-from-us-starting-sunday.](https://www.cnet.com/news/tiktok-wechat-downloads-will-be-barred-from-us-starting-sunday)

1 67. On the same day, another ~~anonymous government~~ senior Trump
 2 administration official ~~intold~~ CNBC that, as a result of Executive Order 13943 and the
 3 Identification, WeChat is “dead in the United States.”³⁰

4 68. In a September 17, 2020 Memorandum for the Secretary of Commerce from
 5 John K. Costello, Deputy Assistant Secretary for Intelligence and Security (“Decision
 6 Memo”), the Commerce Department ~~stated~~ acknowledged that the prohibitions in the
 7 Identification were drafted to Reuters that “The prevent transmission of U.S. Commerce
 8 user data by the WeChat app.

9 65-69. In September 2020, after the President issued Executive Order 13943 but
 10 before the Secretary issued the Identification, the Department[‘s] ... order ... of Homeland
 11 Security’s Cybersecurity and Infrastructure Agency (“CISA”) recommended that
 12 Defendants issue a far narrower prohibition aimed at preventing the use of WeChat on the
 13 devices of State, Local, Tribal, and Territorial partners and critical infrastructure operators.
 14 Defendants rejected the advice of their own intelligence agency in favor of a sweeping ban
 15 that will bar people effectively “shut down” WeChat in the United States from
 16 downloading Chinese-owned messaging app WeChat and video-sharing app TikTok
 17 starting on September 20.”³¹

18 66. According to the official, the Commerce Department order will “deplatform”
 19 the two apps in the United States and bar Apple Inc’s app store, Alphabet Inc’s Google
 20 Play and others from offering the apps on any platform “that can be reached from within
 21

22
 23
 24 ³⁰ Eamon Javers and Kevin Stankiewicz, *TikTok Deal Still Has a Chance but WeChat*
 25 ‘Dead’ in the U.S., says Senior Administration Official, CNBC (Sept. 18, 2020),
[https://www.cnbc.com/2020/09/18/tiktok-deal-still-has-a-chance-but-wechat-dead-in-the-](https://www.cnbc.com/2020/09/18/tiktok-deal-still-has-a-chance-but-wechat-dead-in-the-us-says-senior-administration-official.html)

26 us-says-senior-administration-official.html
 27 ³¹ September 18, 2020 Reuters article titled “Officials: Trump to Block US Downloads of
 28 TikTok, WeChat on Sunday,” available at: [https://www.reuters.com/article/us-usa-tiktok-](https://www.reuters.com/article/us-usa-tiktok-ban-exclusive-idUSKBN2691QO)
ban-exclusive-idUSKBN2691QO. Megan Henney, *Trump Administration to Ban*
Americans from Downloading TikTok, WeChat on Sunday, FOX BUSINESS (Sept. 18,
2020), [https://www.foxbusiness.com/politics/trump-administration-to-ban-americans-](https://www.foxbusiness.com/politics/trump-administration-to-ban-americans-from-downloading-tiktok-wechat)
from-downloading-tiktok-wechat

1 ~~the United States.”³²~~

2 70. In August and September 2020, after the President issued Executive Order
 3 13943 but before the Secretary issued the Identification, representatives for Tencent
 4 attempted to negotiate an agreement with the Commerce Department that would obviate
 5 the purported need for Defendants’ WeChat ban. Among other mitigation measures,
 6 Tencent offered to create a new U.S. version of WeChat; to deploy specific security
 7 measures to protect the U.S. version’s source code; to partner with a U.S. cloud provider
 8 for user data storage; to manage the U.S. version through a U.S.-based entity with a
 9 governance structure approved by the U.S. government; and to provide the U.S.
 10 government with regular compliance audits and notifications, as well as authority to
 11 approve management and personnel with access to user data.

12 71. Defendants rejected Tencent’s proposals to mitigate Defendants’ purported
 13 concerns about data privacy and national security, opting instead to impose the
 14 prohibitions in the Secretary’s Identification, which Defendant Ross himself has stated will
 15 “shut down” WeChat in the United States once implemented.³³

16 72. At least one of Defendants’ rationales for rejecting Tencent’s mitigation
 17 proposals and the recommendations of CISA is rooted in Defendants’ disapproval of the
 18 supposed “propaganda” that WeChat users exchange on the platform, which Defendants
 19 believe benefits the Chinese Communist Party.

20 ~~67-73.~~ Journalists have likewise understood the Executive Order and Identification
 21 as a complete ban on the use of WeChat. On September 18, 2020, the New York Times
 22 reported ~~under the headline:~~ “Trump Administration to Ban TikTok and WeChat From
 23 U.S. App Stores.”³⁴ The Wall Street Journal reported: “U.S. Bans Chinese Apps TikTok
 24

25 ~~³² September 18, 2020 CNET article titled “TikTok, WeChat downloads will be barred~~
 26 ~~from US starting Sunday,” Available at: [https://www.cnet.com/news/tiktok-wechat-](https://www.cnet.com/news/tiktok-wechat-downloads-will-be-bared-from-us-starting-sunday)~~
~~downloads-will-be-bared-from-us-starting-sunday.~~

27 ~~³³ *Id.*~~

28 ~~³⁴ September 18, 2020 New York Times article titled “Ana Swanson, David McCabe, and~~
~~Jack Nicas, Trump Administration to Ban TikTok and WeChat From U.S. App Stores,”~~

1 and WeChat, Citing Security Concerns.” CNBC reported: “Trump to block downloads of
 2 TikTok, WeChat on Sunday,” and noted that “WeChat is considered dead in the U.S.”³⁵
 3 And the Associated Press reported: “US bans WeChat, TikTok from app stores, threatens
 4 shutdowns,” saying that the move could “effectively wreck the operation of both ...
 5 services for U.S. users.”³⁶

6 ~~C.D.~~ **Purported Authority for the Executive Order and Identification**

7 ~~68-74.~~ Both Executive Order 13873 and Executive Order 13943 cite the National
 8 Emergencies Act (“NEA”) and the IEEPA as providing the legal authority for the
 9 President’s ~~actions and the Secretary’s actions. The IEEPA and the NEA were both passed~~
 10 ~~in order to limit the President’s emergency powers.~~³⁷

11 1. The National Emergencies Act

12 ~~69-75.~~ The NEA, Pub. L. No. 94-412, 90 Stat. 1255, codified at 50 U.S.C. §§ 1601-
 13 1651, was enacted by Congress in 1976 to rein in, rather than expand, the power of the
 14 president. The NEA was designed to “insure” that the president’s “extraordinary”
 15 emergency powers would “be utilized only when emergencies actually exist, and then,
 16 only under safeguards of congressional review.” S. Rep. No. 94-1168, at 2 (1976).

17 ~~70-76.~~ To this end, the NEA allows the President to utilize emergency powers

18
 19 ~~available at: N.Y. TIMES (Sept. 18, 2020),~~
~~<https://www.nytimes.com/2020/09/18/business/trump-tik-tok-wechat-ban.html>~~

20 ³⁵ ~~September 18, 2020 CNBC article titled “Steve Kovach, Trump to block~~
 21 ~~downloads~~ *Block Downloads of TikTok, WeChat on Sunday*,” ~~available at: CNBC (Sept.~~
 22 ~~18, 2020), [https://www.cnbc.com/2020/09/18/trump-to-block-us-downloads-of-tiktok-](https://www.cnbc.com/2020/09/18/trump-to-block-us-downloads-of-tiktok-wechat-on-sunday-officials-tell-reuters.html)~~
~~[wechat-on-sunday-officials-tell-reuters.html](https://www.cnbc.com/2020/09/18/trump-to-block-us-downloads-of-tiktok-wechat-on-sunday-officials-tell-reuters.html)~~

23 ³⁶ ~~September 18, 2020 Associated Press article titled “Tali Arbel, Matt O’Brien, and Matt~~
 24 ~~Ott, US Bans WeChat, TikTok From App Stores, Threatens Shutdowns,” available at:~~
~~[Shut Downs, U.S. NEWS & WORLD REPORT \(Sept. 18, 2020\),](https://www.usnews.com/news/business/articles/2020-09-18/us-banning-use-of-wechat-tiktok-for-national-security)~~
~~[https://www.usnews.com/news/business/articles/2020-09-18/us-banning-use-of-wechat-](https://www.usnews.com/news/business/articles/2020-09-18/us-banning-use-of-wechat-tiktok-for-national-security)~~
~~[tiktok-for-national-security](https://www.usnews.com/news/business/articles/2020-09-18/us-banning-use-of-wechat-tiktok-for-national-security)~~

25 ³⁷ ~~See IEEPA, Pub. L. 95-223, tit. III (1977) (stating that IEEPA confers “upon the~~
 26 ~~President a new set of authorities for use in time of national emergency which are both~~
 27 ~~more limited in scope than [those previously allowed] and subject to procedural~~
 28 ~~limitations” (emphasis added)); Jules Lobel, *Emergency Power and the Decline of*~~
~~*Liberalism*, 98 Yale L.J. 1385, 1412 (1989) (the NEA responded to “the twin disasters of~~
~~Vietnam and Watergate” and the sense that “the pendulum had swung too far” toward~~
~~executive power).~~

1 authorized by Congress in other federal statutes only when there is a national emergency
 2 that has been declared in accordance with specific statutory requirements. 50 U.S.C.
 3 § 1621.

4 ~~71-77.~~ Among other actions required by the NEA, the President must specify the
 5 statutory powers he intends to invoke upon issuing a national emergency. 50 U.S.C.
 6 § 1631. He must also publish the declaration of a national emergency in the Federal
 7 Register and transmit it to Congress “immediately.” 50 U.S.C. § 1621(a). Every six
 8 months thereafter, for as long as the emergency remains in effect, the President must
 9 transmit to Congress “a report on the total expenditures incurred by the United States
 10 Government during such six-month period which are directly attributable to the exercise of
 11 powers and authorities conferred by such declaration.” 50 U.S.C. § 1641(c). Each House
 12 of Congress, in turn, must meet at least once every six months following the declaration
 13 “to consider a vote on a joint resolution to determine whether that emergency shall be
 14 terminated.” 50 U.S.C. § 1622(b). Any national emergency declared by the President
 15 automatically terminates after one year unless the President publishes in the Federal
 16 Register and transmits to Congress a notice that the emergency “is to continue in effect
 17 after such anniversary.” 50 U.S.C. § 1622(d).

18 2. The International ~~Economic~~ Emergency Economic Powers Act

19 ~~72-78.~~ The IEEPA grants the President limited emergency powers when the
 20 President has declared a national emergency, pursuant to the NEA, with regard to an
 21 “unusual and extraordinary threat, which has its source in whole or in substantial part
 22 outside the United States[.]” 50 U.S.C. § 1701(a). “Any exercise” of the powers granted
 23 by the IEEPA “to deal with any new threat shall be based on a new declaration of national
 24 emergency which must be with respect to such threat.” 50 U.S.C. § 1701(b).

25 ~~73-79.~~ The IEEPA does not grant the President unlimited powers during national
 26 emergencies. Rather, the statute includes specific limits on the emergency powers it
 27 authorizes. Section 1702(b) of the IEEPA states that “[t]he authority granted to the
 28 President by [the IEEPA] does not include the authority to regulate or prohibit, directly or

1 indirectly ... (1) any postal, telegraphic, telephonic, or other personal communication,
 2 which does not involve a transfer of anything of value; (2) donations, by persons subject to
 3 the jurisdiction of the United States, of articles, such as food, clothing, and medicine,
 4 intended to be used to relieve human suffering ...; (3) the importation from any country, or
 5 the exportation to any country, whether commercial or otherwise, regardless of format or
 6 medium of transmission, of any information or informational materials ...; [or] (4) any
 7 transactions ordinarily incident to travel to or from any country[.]” 50 U.S.C.

8 § 1702(b)(1)-(4). The IEEPA also requires that the President “consult with Congress
 9 before exercising any of the authorities granted by this chapter,” and that the President
 10 “immediately transmit to Congress a report” containing certain additional information
 11 about the President’s reasons for exercising his emergency powers under the IEEPA and
 12 the specific actions he and his subordinates will take in exercising those powers. 50
 13 U.S.C. § 1703(a)-(b).

14 ~~**D. Immediately Preceding the Executive Order, President Trump Targeted**~~
 15 ~~**Denigrating Statements Against China And Chinese People**~~

16 **E. The Executive Order’s Timing Suggests That It Was Issued Not for a**
 17 **Bona Fide National Security Reason But Instead to Further the**
 18 **President’s Political Campaign By Inciting Anti-Asian Sentiment**

19 ~~74.80.~~ In the months before the Executive Order ~~was~~ and Identification were issued,
 20 President Trump made numerous anti-Chinese statements outside the context of national
 21 security that commentators have described as inciting racial animus against persons of
 22 Chinese descent for political gain. Many of these inflammatory statements have been
 23 made in the context of the President blaming the coronavirus pandemic on China. Instead
 24 of using the official public health terms for the virus and the disease it causes, such as the
 25 “novel coronavirus” and “COVID-19,” President Trump has repeatedly and intentionally
 26 referred to the virus causing the current pandemic as the “China virus,” “the Wuhan virus,”
 27 “China Flu,” and “Kung-Flu.”³⁸

28 ³⁸ See, e.g., Remarks by President Trump in Press Briefing (July 23, 2020),

1 75-81. Facing criticism that these word choices were racist and unfairly subjected
 2 Chinese people—including Chinese Americans—to anger and hatred, the White House
 3 ~~spokesperson~~ press secretary has defended Trump’s dangerous and incendiary language.³⁹
 4 The Anti-Defamation League has reported an increasing number of hate crimes, including
 5 racial slurs, spitting on, and physical assaults against Asian-Americans in the United States
 6 following the President’s use of these terms, and warned that “Statements by public
 7 officials referring to COVID-19 as the ‘Chinese virus,’ ‘Kung Flu’ or ‘Wuhan Flu’ may be
 8 exacerbating the scapegoating and targeting of the [Asian American and Pacific Islander]
 9 community.”⁴⁰ The incitement following the President’s statements reminded many in the
 10 Asian American community of the hatred and racial violence focused on persons of Asian

11 _____
 12 <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-press-briefing-072320/> (“We’ve had a tremendous week uniting the country in our fight against the
 13 **China virus**”); Donald J. Trump (@realDonaldTrump), TWITTER (Aug. 2, 2020),
 14 <https://twitter.com/realDonaldTrump/status/1289887533250351110> (“**Big China Virus**
 15 **breakouts** all over the World, including nations which were thought to have done a great
 16 job. The Fake News doesn’t report this. USA will be stronger than ever before, and
 17 soon!”); Donald J. Trump (@realDonaldTrump), TWITTER (Aug. 11, 2020),
 18 <https://twitter.com/realDonaldTrump/status/1293163704188645385> (“More Testing, which
 19 is a good thing (we have the most in the world), equals more Cases, which is Fake News
 20 Gold. They use Cases to demean the incredible job being done by the great men & women
 21 of the U.S. fighting the **China Plague!**”); Donald J. Trump (@realDonaldTrump),
 22 TWITTER (July 26, 2020),
 23 <https://twitter.com/realDonaldTrump/status/1287473812733341696> (“Because of my
 24 strong focus on the **China Virus**, including scheduled meetings on Vaccines, our economy
 25 and much else, I won’t be able to be in New York to throw out the opening pitch for the
 26 @Yankees on August 15th. We will make it later in the season!”); Donald J. Trump
 27 (@realDonaldTrump), TWITTER (Mar. 18, 2020),
 28 <https://twitter.com/realDonaldTrump/status/1240243188708839424> (“I always treated the
Chinese Virus very seriously, and have done a very good job from the beginning,
 including my very early decision to close the “borders” from China - against the wishes of
 almost all. Many lives were saved. The Fake News new narrative is disgraceful & false!”);
 Li Zhou, *Trump’s Racist References to the Coronavirus Are His Latest Effort to Stoke
 Xenophobia*, VOX (June 23, 2020), [https://www.vox.com/2020/6/23/21300332/trump-
 coronavirus-racism-asian-americans](https://www.vox.com/2020/6/23/21300332/trump-coronavirus-racism-asian-americans); Colby Itkowitz, *Trump Again Uses Racially
 Insensitive Term to Describe Coronavirus*, WASH. POST (Jun. 23, 2020),
[https://www.washingtonpost.com/politics/trump-again-uses-kung-flu-to-describe-
 coronavirus/2020/06/23/0ab5a8d8-b5a9-11ea-aca5-ebb63d27e1ff_story.html](https://www.washingtonpost.com/politics/trump-again-uses-kung-flu-to-describe-coronavirus/2020/06/23/0ab5a8d8-b5a9-11ea-aca5-ebb63d27e1ff_story.html).

³⁹ Andrew Restuccia, *White House Defends Trump Comments on ‘Kung Flu,’ Coronavirus Testing*, WALL ST. J. (Jun. 22, 2020), [https://www.wsj.com/articles/white-house-defends-
 trump-comments-on-kung-flu-coronavirus-testing-11592867688](https://www.wsj.com/articles/white-house-defends-trump-comments-on-kung-flu-coronavirus-testing-11592867688).

⁴⁰ *Reports of Anti-Asian Assaults, Harassment and Hate Crimes Rise as Coronavirus Spreads*, ADL BLOG (Jun. 18, 2020), [https://www.adl.org/blog/reports-of-anti-asian-
 assaults-harassment-and-hate-crimes-rise-as-coronavirus-spreads](https://www.adl.org/blog/reports-of-anti-asian-assaults-harassment-and-hate-crimes-rise-as-coronavirus-spreads).

1 descent after the ~~success of the~~ Japanese auto industry was blamed for major job losses in
2 the American Rust Belt.⁴¹

3 76-82. In addition to asserting that the United States' incidence of COVID-19 is
4 China's fault, the President has exploited anti-Chinese sentiment as a rallying cry for his
5 ~~reelection~~ campaign. For example, on August 11, 2020, President Trump stated that
6 "[i]f I don't win the election, China will own the United States. You're going to have to
7 learn to speak Chinese."⁴² President Trump has on numerous occasions mocked the
8 accents of Chinese and Asian-Americans, including those of prominent Asian leaders.⁴³

9 83. Defendants' animus toward persons of Chinese and Chinese-American
10 descent is a key reason they have chosen to ban WeChat. Defendants have not imposed
11 comparable restrictions on software that is not owned and used primarily by persons of
12 Chinese and Chinese-American descent, even when that software collects similar personal
13 and private data from users in the United States and shares that data with the Chinese
14 government. Defendants have not, for example, proposed a comparable ban on Airbnb,
15 despite their knowledge that Airbnb collects a wide range of private information from
16 American users and shares that information with the Chinese government.⁴⁴

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18
19 ⁴¹ Ali Rogin & Amna Nawaz, *'We Have Been Through this Before.'* *Why Anti-Asian Hate*
20 *Crimes Are Rising Amid Coronavirus*, PBS NEWS HOUR (Jun. 25, 2020),
<https://www.pbs.org/newshour/nation/we-have-been-through-this-before-why-anti-asian-hate-crimes-are-rising-amid-coronavirus>.

21 ⁴² Kevin Liptak, *Trump Says Americans Will Have to Learn Chinese if Biden Wins, but*
22 *Offers Little Condemnation of Beijing*, CNN (Aug. 11, 2020),
<https://www.cnn.com/2020/08/11/politics/trump-china-biden-learn-chinese/index.html>

23 ⁴³ See, e.g., Laura Ma, *'We want deal!': Trump fakes Asian accent to mock Chinese and*
24 *Japanese businessmen at US rally*, South China Morning Post (Aug. 26, 2015),
<https://www.scmp.com/news/world/article/1852785/we-want-deal-trump-fakes-asian-accent-mock-chinese-japanese-businessmen>; Jennifer Gould and Emily Smith, *Trump*
25 *cracks jokes about Equinox scandal, kamikaze pilots at Hamptons fundraiser*, N.Y. POST
26 (Aug. 9, 2019), <https://nypost.com/2019/08/09/trump-cracks-jokes-about-rent-control-kamikaze-pilots-at-hamptons-fundraiser/> (reporting on Trump "mimicking Japanese and Korean accents").

27 ⁴⁴ See Dustin Volz and Kirsten Grind, *Airbnb Executive Resigned Last Year Over Chinese*
28 *Request for More Data Sharing*, WALL ST. JOURNAL (Nov. 20, 2020),
<https://www.wsj.com/articles/airbnb-executive-resigned-last-year-over-chinese-request-for-more-data-sharing-11605896753>.

1 84. Defendants’ claim that WeChat presents a threat to national security rings
2 hollow. President Trump waited fifteen months after declaring a national emergency
3 related to foreign-owned technology before targeting WeChat. Then, in issuing the
4 Executive Order, he provided an additional month and a half for the Secretary of
5 Commerce to define the “transactions” banned by the Order. Nothing in the administrative
6 record produced in connection with the Secretary’s Identification provided any evidence
7 that WeChat has been used by China to surveil Americans—let alone in a manner that
8 poses a national security threat. Instead, the generalized threats about China that are
9 identified in the administrative record have been known for years. Moreover, the
10 administrative record does not identify any significant event(s) in the intervening one and a
11 half years between the national emergency identified in Executive Order 13873 and the
12 Executive Order banning WeChat ban that would have prompted the need to ban this app
13 in particular or that would justify immediate action. In a December 4, 2020 letter to
14 Plaintiffs’ counsel, Defendants’ counsel indicated that no additional factual materials
15 beyond those included in the administrative record were considered by Defendant Ross or
16 his subordinates in issuing the Identification.

17 85. President Trump’s assertions of national security threats related to WeChat
18 are pretextual. Indeed, this is not the only time that President Trump has invoked vague
19 national security threats related to social media apps for his own political gain. For
20 example, on December 1, 2020, after Facebook and Twitter engaged in a public awareness
21 campaign notifying users that President Trump’s claims about the 2020 election include
22 false claims and disinformation, President Trump stated that Section 230 of the 1996
23 Communications Decency Act “is a serious threat to our National Security.... Our Country
24 can never be safe & secure if we allow it to stand.”⁴⁵

25
26 ⁴⁵ Jaelyn Diaz, Trump Vows To Veto Defense Bill Unless Shield For Big Tech Is
27 Scrapped, NPR (Dec. 2, 2020), [https://www.npr.org/2020/12/02/941019533/trump-vows-](https://www.npr.org/2020/12/02/941019533/trump-vows-to-veto-defense-bill-unless-shield-for-big-tech-is-scrapped)
28 to-veto-defense-bill-unless-shield-for-big-tech-is-scrapped; see also Cat Zakrzewski, *The*
Technology 202: Trump's misleading claims about Section 230 could last beyond his
showdown with Congress, THE WASHINGTON POST (Dec. 3, 2020),

1 **THE EXECUTIVE ORDER AND IDENTIFICATION CAUSED MASS**
 2 **CONFUSION AND HAS VE ALREADY HARMED AND WILL CONTINUE TO**
 3 **HARM PLAINTIFFS**

4 77-86. American law firms have been unable to advise their clients as to the scope
 5 of “transactions” that are banned under Executive Order 13943. Multiple prominent law
 6 firms in the United States have effectively conceded that they cannot provide guidance
 7 about the meaning of the Executive Order, and have speculated that all uses of WeChat
 8 could be prohibited. One law firm ~~recently~~ informed its clients that the “extraordinary
 9 breadth and ambiguity” of the Executive Order has “left US companies and many others
 10 looking to the Trump Administration for additional clarity[.]”⁴⁶ Another firm speculated
 11 that WeChat “could be pulled out of the app stores and off of American phones
 12 Companies could be banned from interacting with the extensive interactive payment
 13 network used by WeChat.”⁴⁷

14 87. The general public understands the Executive Order itself as prohibiting the
 15 use of WeChat. The University of Kansas, for example, announced on September 15,
 16 2020—before the Secretary issued the Identification—that it would ban the use of WeChat
 17 on all KU-owned computers and the campus network, stating that “KU’s Office of Global
 18 Operations & Security, the Office of the General Counsel and KU Information Technology
 19 have determined that use of WeChat in KU’s business operations and on its networks will

20
 21 <https://www.washingtonpost.com/politics/2020/12/03/technology-202-trump-misleading-claims-about-section-230-could-last-beyond-his-showdown-with-congress/> (This claim particularly was a real head-scratcher for many tech policy observers because there is not a clear link between Section 230 and national security, and Trump didn’t explain why he believed it put the country at risk.”).

24 ⁴⁶ Ambassador Charlene Barshefsky, David S. Cohen, Ronald I. Meltzer, David M. Horn & Semira Nikou, *New Executive Orders Target Chinese Apps*, WILMER HALE, (Aug. 10, 2020), <https://www.wilmerhale.com/en/insights/client-alerts/20200810-new-executive-orders-target-chinese-apps>.

26 ⁴⁷ David A. Kaufman, John Sandweg, David K. Cheng & Rachel S. Winkler, *Administration’s Attempt to Delete TikTok and WeChat: Latest Trade Tiff or New Battle*, NIXON PEABODY (Aug. 7, 2020), <https://www.nixonpeabody.com/en/ideas/articles/2020/08/07/administrations-attempt-to-delete-tiktok-and-wechat>.

1 fall within the scope of the executive order’s ban.”⁴⁸

2 88. Even after the Commerce Department issued the Identification, law firms
 3 remained confused as to what, exactly, was prohibited. For example, Wilson Sonsini
 4 issued a client alert stating that: “The Orders use broad terminology and not all terms are
 5 defined. As such, we believe further guidance from the Commerce Department regarding
 6 the precise scope of the restrictions set forth in the Orders is necessary.”⁴⁹ Steptoe &
 7 Johnson LLP advised its clients that the “fifth prohibition is particularly broad, and less
 8 clear than the others... this provision will likely be a focus of concern within industry and
 9 among other stakeholders and would benefit from clarification by the Commerce
 10 Department.”⁵⁰

11 ~~78-89.~~ Each plaintiff learned of the Executive Order and Identification at or near the
 12 time ~~it was~~they were issued and ~~has~~ve suffered harm as a result of the ~~Executive Order’s~~
 13 ~~sweeping prohibition on “any transaction that is related to WeChat by any person, or with~~
 14 ~~respect to any property.”~~ 85 FR 48641, at § 1(a).~~prohibitions.~~ Plaintiff Duan, for example,
 15 experiences fear and worry ~~on a daily basis~~ that Chihuo, ~~Inc.~~ —the business she founded
 16 and for which she continues to serve as CEO—will not survive if it cannot provide
 17 services to customers through WeChat. Plaintiff Peng fears that the non-profit
 18 organization she founded will not be able to continue providing services to Chinese
 19 speakers in the United States, and that she personally will be unable to maintain her social

20 _____
 21 ⁴⁸ Blake Ullmann, KU-Owned Computers, Campus Wi-Fi Will Ban Use of WeChat, THE
 22 UNIVERSITY DAILY KANSAN (Sept. 15, 2020), https://www.kansan.com/news/ku-owned-computers-campus-wi-fi-will-ban-use-of-wechat/article_0d3326b8-f76b-11ea-bd4c-dbb1fe3ba1be.html.

23 ⁴⁹ Anne E. Symour, Josephine I. Aiello LeBeau, Melissa B. Mannino, Joshua F.
 24 Gruenspecht, U.S. Department of Commerce Publishes Transactions with ByteDance and
 25 Tencent That Are Prohibited Due to National Security Concerns Raised by TikTok and
 26 WeChat, WILSON SONSINI (Sept. 18, 2020), <https://www.wsgr.com/en/insights/us-department-of-commerce-publishes-transactions-with-bytedance-and-tencent-that-are-prohibited-due-to-national-security-concerns-raised-by-tiktok-and-wechat.html>.

27 ⁵⁰ Peter Jeydel, Martin Willner, Wendy Wysong, Ed Krauland, Jack Hayes, Meredith
 28 Rathbone & Brian Egan, US Commerce Department Identifies Prohibited Transactions
Involving WeChat and TikTok, STEPTOE & JOHNSON LLP (Sept. 20, 2020),
<https://www.steptoeinternationalcomplianceblog.com/2020/09/us-commerce-department-identifies-prohibited-transactions-involving-wechat-and-tiktok/>.

1 ties and communicate with other members of the Chinese community in the United States.
2 Plaintiff Zhang worries that she will be unable to maintain social ties and communicate
3 with other Chinese-speaking people—both in the United States and in China. She believes
4 that the charity she founded—Hita Education Foundation—could not have been founded
5 without WeChat and may not be able to survive without being able to connect with
6 Chinese-speaking people through the app. Each individual plaintiff fears losing
7 connection with close friends and family members.

8 90. All plaintiffs, moreover, have already been forced by the Executive Order
9 and Identification to expend time and resources preserving their contacts and memories on
10 WeChat and/or searching—without success—for an alternative platform that could sustain
11 their businesses, charities, and/or social and family ties. Plaintiff Peng has received
12 inquiries from Chinese families through MHACC, her mental health WeChat group, about
13 where to go if WeChat is banned, but has been unable find a comparable substitute to
14 replace WeChat. Plaintiff Chihuo has spent money attempting to redirect its business
15 activities that currently depend on WeChat by establishing alternative social media
16 channels on YouTube, Instagram and Facebook. ~~These efforts to find a substitute for~~
17 ~~WeChat have not been and are unlikely to be successful. This is because alternative apps~~
18 ~~often do not offer a Chinese user interface. More~~

19 91. ~~These efforts to find a substitute for WeChat have not been and are unlikely~~
20 ~~to be successful. A ban would be particularly harmful to Plaintiffs and other WeChat users~~
21 ~~who are not literate in English and cannot turn to alternative options, many of which are~~
22 ~~not available in these users' native tongue, do not offer a useful Chinese-language interface~~
23 ~~or notifications, suffer from poor translation functions and inadequate customer service,~~
24 ~~and/or do not provide user or privacy policies in Chinese. Many WeChat users do not~~
25 ~~know how to use alternative interfaces. Other apps do not offer the features offered by~~
26 ~~WeChat, such as “official accounts” that enable users like Plaintiff Chihuo to easily and~~
27 ~~quickly publish articles embedded with pictures and videos and manage comments on the~~
28 ~~account to remove offensive comments and prioritize comments that the account-holder~~

1 approves. Other features unique to WeChat include “mini-programs” that offer a wide
2 range of formatting tools; group chats in which the host has the power to admit and remove
3 participants so as to prevent the chats from being flooded with unwanted advertisements or
4 disruptive messages; and high-quality voice and video calls. Other apps lack WeChat’s
5 language-specific development and features that make it culturally relevant to its Chinese
6 (and Chinese-American) users.

7 79-92. Most importantly, alternative apps also do not provide access to WeChat’s
8 vast network of Chinese-speaking users. Without mining words, Plaintiffs’ family
9 members, friends, clients, contacts, news sources, and religious community are regularly
10 on WeChat, not other apps. WeChat’s enormous network effect is *irreplaceable*, and any
11 other platform would not provide the community that WeChat does.

12 93. Implementation of the prohibitions in the Identification would further harm
13 Plaintiffs. John K. Costello, Deputy Assistant Secretary for Intelligence and Security, has
14 admitted that if the Identification is implemented, the WeChat app will become slower to
15 respond, certain features will be impaired, and the app will become unusable to the point
16 that users in the United States will not be able to use it to communicate or transmit data.
17 Plaintiffs and other ordinary WeChat users will be harmed if and when WeChat service is
18 slowed or degraded. For example, Chihuo’s business model relies on speed and prompt
19 results provided by WeChat, and it will lose clients and customers if service is slowed or
20 degraded. Similarly, high-quality voice and video calls are a critical function of WeChat,
21 and Plaintiffs will be harmed if their call quality degrades to the point where such calls are
22 interrupted or cannot be maintained.

23 94. Mr. Costello has also acknowledged that the first prohibition of the
24 Identification will prevent Plaintiffs from being able to receive security updates to
25 WeChat. Such updates and new downloads are necessary to fix security vulnerabilities in
26 apps such as WeChat. By preventing users from downloading new versions of the app or
27 updating the app, Executive Order 13943 and the Identification make it *more likely that*
28 Plaintiffs’ private data and information will be stolen by, or otherwise shared with, entities

1 such as the Chinese government. This prohibition would ensure that Plaintiffs and other
 2 current users would become vulnerable to cyber-attacks as soon as un-addressed
 3 vulnerabilities become public. Vulnerabilities requiring updates are common among social
 4 media apps.⁵¹

5 FIRST CLAIM FOR RELIEF

6 (First Amendment ~~Freedom of~~ Speech and Association)

7 ~~80.95.~~ Plaintiffs reallege and hereby incorporate by reference the allegations
 8 contained in the preceding paragraphs of this Complaint.

9 ~~81.96.~~ The First Amendment guarantees freedoms concerning religion, expression,
 10 the press, assembly, and petitioning the government. ~~Plaintiffs' use of~~ Plaintiffs depend on
 11 WeChat ~~are exercises to~~ exercise each of ~~all~~ these freedoms.

12 ~~82.97.~~ WeChat ~~is a mobile application that~~ is broadly used by members of the
 13 Chinese diaspora throughout the world, serving as a virtual public square where people
 14 within the Chinese and Chinese-speaking communities can connect based on shared
 15 interests. Plaintiffs and other WeChat users ~~use~~ rely on the app to express themselves and
 16

17 ⁵¹ See, e.g., Samuel Gibbs, "WhatsApp hack: have I been affected and what should I do?"
 18 *The Guardian* (May 14, 2019),
 19 [https://www.theguardian.com/technology/2019/may/14/whatsapp-hack-have-i-been-](https://www.theguardian.com/technology/2019/may/14/whatsapp-hack-have-i-been-affected-and-what-should-i-do)
 20 [affected-and-what-should-i-do](https://www.theguardian.com/technology/2019/may/14/whatsapp-hack-have-i-been-affected-and-what-should-i-do); Adam Clark Estes, "Google's Fixing the Hangouts Hack
 21 With 'Biggest Software Update Ever,'" *Gizmodo* (Aug. 5, 2015),
 22 [https://gizmodo.com/googles-fixing-the-hangouts-hack-with-biggest-software-](https://gizmodo.com/googles-fixing-the-hangouts-hack-with-biggest-software-1722296396)
 23 [1722296396](https://gizmodo.com/googles-fixing-the-hangouts-hack-with-biggest-software-1722296396); Mike Isaac and Sheera Frenkel, "Facebook Security Breach Exposes
 24 Accounts of 50 Million Users," *N.Y. Times* (Sept. 28, 2018),
 25 <https://www.nytimes.com/2018/09/28/technology/facebook-hack-data-breach.html>;
 26 Shannon Liao, "Facebook Messenger had a vulnerability that could let hackers see who
 27 you contact," *The Verge* (Mar. 7, 2019),
 28 [https://www.theverge.com/2019/3/7/18254788/facebook-messenger-vulnerability-attack-](https://www.theverge.com/2019/3/7/18254788/facebook-messenger-vulnerability-attack-imperva-iframe-malicious)
[imperva-iframe-malicious](https://www.theverge.com/2019/3/7/18254788/facebook-messenger-vulnerability-attack-imperva-iframe-malicious); Maya Shwayder, "Vulnerability in Signal messaging app could
let hackers track your location," *Digital Trends* (May 20, 2020),
<https://www.digitaltrends.com/news/signal-vulnerability-hack-location/>; Brian Fung, "A
Snapchat security breach affects 4.6 million users. Did Snapchat drag its feet on a fix?"
Wash. Post (Jan. 1, 2014), [https://www.washingtonpost.com/news/the-](https://www.washingtonpost.com/news/the-switch/wp/2014/01/01/a-snapchat-security-breach-affects-4-6-million-users-did-snapchat-drag-its-feet-on-a-fix/)
[switch/wp/2014/01/01/a-snapchat-security-breach-affects-4-6-million-users-did-snapchat-](https://www.washingtonpost.com/news/the-switch/wp/2014/01/01/a-snapchat-security-breach-affects-4-6-million-users-did-snapchat-drag-its-feet-on-a-fix/)
[drag-its-feet-on-a-fix/](https://www.washingtonpost.com/news/the-switch/wp/2014/01/01/a-snapchat-security-breach-affects-4-6-million-users-did-snapchat-drag-its-feet-on-a-fix/); Lee Bell, "Skype security flaw 'ignored' by Microsoft could allow
hackers to gain access to users' computers," *ITPro* (Feb. 14, 2018),
[https://www.itpro.co.uk/security/30539/skype-security-flaw-ignored-by-microsoft-could-](https://www.itpro.co.uk/security/30539/skype-security-flaw-ignored-by-microsoft-could-allow-hackers-to-gain-access-to-users)
[allow-hackers-to-gain-access-to-users](https://www.itpro.co.uk/security/30539/skype-security-flaw-ignored-by-microsoft-could-allow-hackers-to-gain-access-to-users); Lily Hay Newman, "Hackers Can Break Into an
iPhone Just by Sending a Text," *Wired* (Aug. 7, 2019),
<https://www.wired.com/story/imessage-interactionless-hacks-google-project-zero/>.

1 communicate by text, voice, and video messaging; attend religious services and cultural
 2 events; organize political groups and causes; and read and, share, and receive news and
 3 other information in the media, among other protected First Amendment activities. ~~These~~
 4 ~~actions can reasonably be understood to be included as “any transaction that is related to~~
 5 ~~WeChat by any person, or with respect to any property,” as provided in the Executive~~
 6 ~~Order.~~

7 ~~83.—Executive Order 13943 and the Identification effectively ban the use of~~
 8 ~~WeChat in the United States.~~ Banning the use of WeChat in the United States has the
 9 effect of ~~foreclosing~~ limiting Plaintiffs’ rights to send and receive information. Executive
 10 Order 13943 and the Identification foreclose all meaningful access to social media for
 11 users, such as Plaintiffs, who wish to communicate and ~~interact~~ associate with members of
 12 the Chinese and Chinese-speaking communities.

13 ~~84.98. The Executive Order discriminates against the ideas and viewpoints of~~
 14 ~~WeChat users. Under the Executive Order, only content on WeChat is prohibited; the~~
 15 ~~content on other comparable mobile applications is not regulated or prohibited, despite~~
 16 ~~also capturing personal and proprietary information from its users. Therefore Indeed, the~~
 17 ~~Executive Order targets speech by WeChat users, the majority of whom are members of~~
 18 ~~the Chinese and Chinese-speaking communities, and intends to silence viewpoints within~~
 19 ~~these communities is a prior restraint that suppresses Plaintiffs’ constitutionally protected~~
 20 ~~speech, associational, and religious activities before they occur.~~

21 ~~85.—The Executive Order is overly expansive and does not justify the supposed~~
 22 ~~risks that are presented by permitting WeChat to operate in the United States. There are~~
 23 ~~less restrictive ways to regulate the collection of personal and proprietary information on~~
 24 ~~the WeChat app and address potential national security concerns. Defendants cannot~~
 25 ~~proffer a justifiable reason for discriminating against the content of WeChat users, who~~
 26 ~~express viewpoints within the Chinese and Chinese-speaking communities.~~

27 ~~86.—The Executive Order is substantially overbroad in that it renders people who~~
 28 ~~conduct “any transaction that is related to WeChat” subject to incarceration and monetary~~

1 ~~penalties, even though “any transaction” includes a wide range of protected expressive and~~
2 ~~associative rights under the First Amendment.~~

3 ~~87. Plaintiff and others similarly situated have been and will continue to be~~
4 ~~chilled and burdened in the exercise of their First Amendment rights because of the threat~~
5 ~~of penalties, including incarceration and other treatment, under the Executive Order that~~
6 ~~arises in connection with “any transaction that is related to WeChat.”~~

7 ~~99. The Executive Order singles out WeChat users because of the content of~~
8 ~~their speech and treats WeChat users’ speech less favorably than that of users of other~~
9 ~~social media platforms. The Executive Order does so for the purpose of silencing the~~
10 ~~viewpoints of WeChat’s primarily Chinese and Chinese-American users and suppressing~~
11 ~~viewpoints that Defendants believe are insufficiently critical of the Chinese government.~~
12 ~~The suppression of Chinese “propaganda” is one of the animating purposes of the~~
13 ~~Executive Order.~~

14 ~~100. The Executive Order is substantially overbroad on its face. By prohibiting~~
15 ~~“any transaction that is related to WeChat,” the Executive Order prohibits substantially~~
16 ~~more speech, association, and religious activity than the Constitution allows. The~~
17 ~~deleterious effects of the Executive Order’s overbreadth are compounded by the fact that~~
18 ~~violators may be punished with severe civil and criminal penalties, including incarceration,~~
19 ~~under 50 U.S.C. § 1705. Such severe penalties will lead (and already have led) to broad~~
20 ~~self-censorship among WeChat users and Tencent’s business partners in the United~~
21 ~~States—including those whose speech, association, and religious activities on WeChat may~~
22 ~~not be constitutionally prohibited. Because of its substantial overbreadth, the Executive~~
23 ~~Order is unconstitutional in every conceivable application.~~

24 ~~101. The transactions prohibited by the Identification are necessary for WeChat to~~
25 ~~function in the United States. Defendant Ross and at least one senior Trump~~
26 ~~administration official have publicly admitted that implementing the prohibitions in the~~
27 ~~Identification will result in WeChat being “shut down” and/or “dead” in the United States.~~
28 ~~Implementing these prohibitions will effectively ban WeChat in the United States.~~

1 Eliminating the ability of WeChat to function in the United States will have the effect of
2 foreclosing all meaningful access to social media for WeChat users such as Plaintiffs, who
3 use WeChat to communicate and associate with members of the Chinese and Chinese-
4 speaking communities. Whether the ban results in an immediate cessation of all activity
5 on WeChat or chills an increasing number of people from using the app (while subjecting
6 them to additional risk), the effect will be to curtail speech, which the First Amendment
7 does not permit. Without question, disabling an essential mode of communication is a
8 prior restraint, and so violates the Constitution. Additionally, implementation of the
9 Identification’s prohibitions would decrease user privacy, over-block access to legal
10 content, fuel Internet fragmentation, undermine Internet freedom, and interfere with or
11 even end direct Internet traffic between the United States and China.

12 102. The Identification singles out WeChat users because of the content of their
13 speech and treats WeChat users’ speech less favorably than that of users of other social
14 media platforms. The Identification does so for the purpose of silencing the viewpoints of
15 WeChat’s primarily Chinese and Chinese-American users and suppressing viewpoints that
16 Defendants believe benefit the Chinese Communist Party. The suppression of Chinese
17 “propaganda” is one of the animating purposes of the Identification. The government
18 claims to be protecting its citizens and residents from material that is supportive of the
19 PRC, based on the Secretary’s concern that China could use WeChat to “subversively
20 influence the views of millions of” U.S. users, in a manner that “align[s] with Chinese
21 government objectives.” These justifications necessarily make the WeChat ban a content-
22 based prohibition.

23 103. The Identification is overbroad on its face. By prohibiting transactions that
24 are necessary for WeChat to function in the United States, the Identification suppresses
25 substantially more speech than the Constitution allows. The deleterious effects of the
26 Identification’s overbreadth are compounded by the fact that violators may be punished
27 with severe civil and criminal penalties, including incarceration, under 50 U.S.C. § 1705.
28 Such severe penalties will lead third-party service providers targeted by the Identification

1 to cut off even more speech-enabling services to WeChat than the prohibitions may require
2 of them, so as to eliminate even the remote possibility of incurring the substantial civil and
3 criminal penalties authorized by Section 1705. Because of its substantial overbreadth, the
4 Identification is unconstitutional in every conceivable application.

5 104. Defendants lack a sufficient interest to justify either the Executive Order’s or
6 the Identification’s burden on constitutionally protected speech and associational and
7 religious activities. Neither the Executive Order nor the Identification is narrowly tailored
8 to achieve the governments’ purported interest in preventing WeChat from collecting and
9 sharing Plaintiffs’ personal information. And neither the Executive Order nor the
10 Identification leaves open ample alternative channels for the exercise of Plaintiffs’
11 protected First Amendment activities.

12 88-105. Accordingly, the Executive Order ~~violates~~ and Identification violate
13 Plaintiffs’ rights as guaranteed by under the First Amendment. ~~Defendants’ violations~~ and
14 inflict ongoing harm upon Plaintiffs.

15 **SECOND CLAIM FOR RELIEF**

16 **(First Amendment – Free Exercise Clause)**

17 106. Plaintiffs reallege and hereby incorporate by reference the allegations
18 contained in the preceding paragraphs of this Complaint.

19 107. The First Amendment’s Free Exercise Clause provides that “Congress shall
20 make no law respecting an establishment of religion, or prohibiting the free exercise
21 thereof.”

22 108. WeChat users in the United States depend on WeChat to participate in
23 religious worship and other practices in accordance with the tenets and practices of their
24 religion. Plaintiff Bao, for example, is a member of New Life Chinese Alliance Church in
25 New York. Due to the ongoing COVID-19 pandemic, he and his fellow congregants do
26 not attend church or participate in other church activities in person. Instead, he and his
27 fellow congregants rely on WeChat for religious activities—such as participating in Bible
28 Study groups. Plaintiff Bao and his fellow congregants regularly participate in a Bible

1 Study group on WeChat.

2 109. Executive Order 13943 and the Identification effectively ban WeChat in the
3 United States. In doing so, the Executive Order and the Identification will prevent Plaintiff
4 Bao and his fellow congregants at the New Life Chinese Alliance Church from
5 participating in Bible Study groups and other religious activities. Executive Order 13943
6 and the Identification place a substantial burden on Bao’s exercise of religion.

7 110. There is no rational connection between the government’s avowed interest in
8 preventing WeChat from sharing U.S. users’ private data and information with the Chinese
9 government and the means it has chosen to advance that interest.

10 111. By banning WeChat and preventing users from patching security
11 vulnerabilities in the WeChat app without a rational basis for doing so, Defendants have
12 deprived and will continue to deprive Plaintiff Bao of his rights under the Free Exercise
13 Clause.

14 **THIRD CLAIM FOR RELIEF**

15 **(First and Fifth Amendments – Vagueness)**

16 112. Plaintiffs reallege and hereby incorporate by reference the allegations
17 contained in the preceding paragraphs of this Complaint.

18 113. Sections 1(a) and 2 of Executive Order 13943 alter the legal rights and
19 obligations of private parties, including Plaintiffs. Section 1(a) prohibits “any transaction
20 that is related to WeChat by any person, or with respect to any property, subject to the
21 jurisdiction of the United States, with Tencent Holdings Ltd. (a.k.a. Ténghùn Kònggǔ
22 Yǒuxiàn Gōngsī), Shenzhen, China, Start Printed Page 48642 or any subsidiary of that
23 entity, as identified by the Secretary of Commerce (Secretary) under section 1(c) of this
24 order.” Section 1(c) provides that “45 days after the date of this order, the Secretary shall
25 identify the transactions subject to subsection (a) of this section.” Violations of Sections
26 1(a) and 2 are punishable by incarceration and monetary penalties. 50 U.S.C. § 1705(b)-
27 (c).

28 114. The Identification identifies certain transactions subject to section 1(a) of the

1 Executive Order, but it provides vague and inadequate notice of the conduct it purports to
2 prohibit. Although the Identification states that the prohibitions apply only “to the parties
3 to business-to-business transactions,” the Identification does not define “business-to-
4 business transactions.” Nor does the Identification define the terms in prohibition number
5 six (prohibiting “any utilization of the WeChat mobile application’s constituent code,
6 functions, or services in the functioning of software or services”). Plaintiff Chihuo,
7 reasonably fears that any use of WeChat by the company may qualify as “any utilization of
8 the WeChat mobile application’s constituent code,” and subject the company to the
9 criminal and civil penalties authorized by 50 U.S.C. § 1705.

10 115. The Identification further prohibits “Any other transaction that is related to
11 WeChat by any person, or with respect to any property, subject to the jurisdiction of the
12 United States, with Tencent Holdings Ltd., or any subsidiary of that entity, as may be
13 identified at a future date under the authority delegated under Executive Order 13943.” No
14 reasonable person could tell what conduct may be prohibited under this provision.
15 Because of this uncertainty, Plaintiff Chihuo reasonably fears that its continued use of
16 WeChat may trigger the civil and criminal penalties authorized by 50 U.S.C. § 1705.

17 116. The Executive Order and the Identification are therefore void for vagueness
18 under the First and Fifth Amendments to the U.S. Constitution.

19 **FOURTH CLAIM FOR RELIEF**

20 **(Fifth Amendment – Equal Protection)**

21 ~~89.117.~~ Plaintiffs reallege and hereby incorporate by reference the allegations
22 contained in the preceding paragraphs of this Complaint.

23 ~~90.118.~~ The Due Process Clause of the Fifth Amendment prohibits the Federal
24 Government from denying equal protection of the laws, including on the basis of race,
25 ethnicity, nationality, national origin, and alienage.

26 ~~91.119.~~ WeChat is widely used and depended on by the Chinese community
27 in the United States to communicate with friends, family, customers, and other persons of
28 Chinese or Chinese American ancestry, including Chinese-language speakers.

1 92-120. Plaintiffs Peng, Duan, Zhang, and Bao are members of the Chinese
 2 community in the United States. Plaintiff Brent Coulter uses WeChat to communicate
 3 with people of Chinese and/or Chinese-American ancestry in the United States and abroad.
 4 Plaintiffs USWUA and Chihuo are organizations or businesses whose members or
 5 customers primarily consist of people of Chinese and/or Chinese American ancestry in the
 6 United States, who use WeChat to communicate with others similar to them both in the
 7 United States and abroad.

8 121. Defendants have not imposed comparable restrictions on software that
 9 collects similar personal and private data from users in the United States and shares that
 10 data with the Chinese government, but that is not owned and used primarily by persons of
 11 Chinese and Chinese-American descent. Defendants have not, for example, proposed a
 12 comparable ban on Airbnb, despite their knowledge that Airbnb collects a wide range of
 13 private information from American users and shares that information with the Chinese
 14 government.⁵²

15 93-122. By prohibiting the use of WeChat but not other apps that are owned
 16 and used primarily by people who are not of Chinese or Chinese-American ancestry,
 17 Executive Order 13943 singles and the Identification single out people of Chinese and
 18 Chinese-American ancestry and subjects them and people those who wish to communicate
 19 and associate with them, and subject them to disparate treatment on the basis of race,
 20 ethnicity, nationality, national origin, and alienage.

21 94-123. This disparate treatment is motivated by Defendants' animus towards
 22 people of Chinese and/or Chinese American ancestry, and has the purpose of
 23 discriminating against people of Chinese and/or Chinese-American ancestry.

24 95-124. Defendants' issuance of Executive Order 13943 and the Identification
 25 therefore violates Plaintiffs' rights to equal protection guaranteed by the Fifth Amendment

26 _____
 27 ⁵² See Dustin Volz and Kirsten Grind, *Airbnb Executive Resigned Last Year Over Chinese*
 28 *Request for More Data Sharing*, WALL ST. JOURNAL (Nov. 20, 2020),
<https://www.wsj.com/articles/airbnb-executive-resigned-last-year-over-chinese-request-for-more-data-sharing-11605896753>.

1 to the United States Constitution. Defendants' violations inflict ongoing harm upon
2 Plaintiffs.

3 **FIFTH CLAIM FOR RELIEF**

4 **(Fifth Amendments — Due Process)**

5 ~~96.1. Plaintiffs reallege and hereby incorporate by reference the allegations~~
6 ~~contained in the preceding paragraphs of this Complaint.~~

7 ~~97. Sections 1(a) and 2 of Executive Order 13943 alter the legal rights and~~
8 ~~obligations of private parties, including Plaintiffs, independent of any action by the~~
9 ~~Secretary of Commerce.~~

10 ~~98. These sections include only a conclusory description of prohibited~~
11 ~~“transactions related to WeChat,” which provides no notice to WeChat users or anyone~~
12 ~~else of the specific conduct that is prohibited.~~

13 ~~99.1. In spite of the Executive Order's vagueness, violations of Sections 1(a) and 2~~
14 ~~are punishable by incarceration and monetary penalties. 50 U.S.C. § 1705(b) (c).~~

15 ~~100. Plaintiffs, who use WeChat to communicate and share information with~~
16 ~~friends, family, customers, and other persons both in the United States and abroad, do not~~
17 ~~know which of their activities that involve WeChat are prohibited by the Executive Order.~~
18 ~~Because of this uncertainty, they are justifiably fearful of using WeChat in any way and for~~
19 ~~any purpose.~~

20 ~~101. Sections 1(a) and 2 of Executive Order 13943 provide inadequate notice of~~
21 ~~the conduct they purport to penalize and are void for vagueness under the Fifth~~
22 ~~Amendment to the U.S. Constitution.~~

23 **FOURTH CLAIM FOR RELIEF**

24 **(Ultra Vires (50 U.S.C. § 1702(b)))**

25 ~~102.125. Plaintiffs reallege and hereby incorporate by reference the allegations~~
26 ~~contained in the preceding paragraphs of this Complaint.~~

27 ~~103.126. The IEEPA includes specific limits on Defendants' authority to~~
28 ~~prohibit transactions related to WeChat. Section 1702(b) of the IEEPA states in relevant~~

1 part that “[t]he authority granted to the President by [the IEEPA] does not include the
 2 authority to regulate or prohibit, directly or indirectly... (1) any postal, telegraphic,
 3 telephonic, or other personal communication, which does not involve a transfer of anything
 4 of value; (2) donations, by persons subject to the jurisdiction of the United States, of
 5 articles, such as food, clothing, and medicine, intended to be used to relieve human
 6 suffering...~~[or]...~~; (3) the importation from any country, or the exportation to any country,
 7 whether commercial or otherwise, regardless of format or medium of transmission, of any
 8 information or informational materials~~[.]~~...; [or] (4) any transactions ordinarily incident
 9 to travel to or from any country[.]” 50 U.S.C. § 1702(b)(1)-(34).

10 127. Plaintiffs rely on WeChat for “personal communication[s]” that “do[] not
 11 involve a transfer of anything of value,” within the meaning of 50 U.S.C. § 1702(b)(1).

12 128. Plaintiffs rely on WeChat to donate as well as to coordinate and arrange for
 13 donations of “articles... intended to be used to relieve human suffering,” within the
 14 meaning of 50 U.S.C. § 1702(b)(2). Neither the President nor the Secretary has issued any
 15 findings that the coordination and donation of such articles would seriously impair the
 16 President’s ability to deal with any national emergency, are in response to coercion against
 17 the proposed recipient or donor, or would endanger Armed Forces of the United States
 18 which are engaged in hostilities or are in a situation where imminent involvement in
 19 hostilities is clearly indicated by the circumstances.

20 129. Plaintiffs rely on WeChat to import and/or export “information or
 21 information materials,” within the meaning of 50 U.S.C. § 1702(b)(3).

22 130. Plaintiffs rely on WeChat to complete “transactions ordinarily incident to
 23 travel to or from any country,” within the meaning of 50 U.S.C. § 1702(b)(4).

24 ~~104, 131.~~ Neither the President nor any other federal official can take an action
 25 that exceeds the scope of their constitutional and/or statutory authority. In Executive
 26 Order 13943, however, the President has nonetheless “prohibited” Plaintiffs from using
 27 WeChat in any manner, ~~in direct contravention~~ thereby exceeding each of the four specific
 28 limits on ~~Presidential~~ his authority contained in 50 U.S.C. § 1702(b).

1 ~~105.~~—The Secretary’s Identification likewise seeks to effectuate an outright ban of
 2 the WeChat platform—Defendant Ross has admitted that the prohibitions in his
 3 Identification will “shut down” WeChat in the United States once those prohibitions are
 4 implemented. By shutting down WeChat in the United States, the Identification
 5 necessarily regulates or prohibits, directly eurtailing “or indirectly, personal
 6 communications” in the manner explicitly prohibited by the IEEPA.

7 ~~106.~~—Plaintiffs use WeChat for “personal communication[s]” that “that do[] not
 8 involve a transfer of anything of value,” within the meaning of 50 U.S.C. § 1702(b)(1).

9 ~~107.~~—Plaintiffs use WeChat to coordinate, the donation and arrange for
 10 coordination of donations of “articles ... intended to be used to relieve human suffering,”
 11 within the meaning of 50 U.S.C. § 1702(b)(2).

12 ~~108.1.~~ Plaintiffs use WeChat to import and/or export “information or information
 13 materials,” within the meaning of 50 U.S.C. § 1702(b)(3).

14 ~~109.132.~~ Defendants are acting *ultra vires* in prohibiting “personal
 15 communication[s],” that “do[] not involve a transfer of anything of value,” as well as the
 16 coordination of donations of “articles ... intended to be used to relieve human suffering”
 17 and the importation and/or exportation of “information or information materials.”
 18 exportation of information or informational materials, and transactions ordinarily incident
 19 to travel to or from any country. By regulating or prohibiting these activities, directly or
 20 indirectly, the Identification exceeds each of the four specific limits on the Secretary’s
 21 authority contained in 50 U.S.C. § 1702(b).

FIFTH CLAIM FOR RELIEF

(Ultra Vires (50 U.S.C. §§ 1621-22, 1641, 1703))

24 ~~110.~~—Plaintiffs reallege and hereby incorporate by reference the allegations
 25 contained in the preceding paragraphs of this Complaint.

26 ~~111.~~—On information and belief, Defendants did not immediately transmit to
 27 Congress the President’s declaration of a national emergency contained in Executive Order
 28 ~~13873~~, as required by 50 U.S.C. § 1621(a).

1 ~~112.—On information and belief, neither house of Congress has met, at the required~~
 2 ~~six month intervals or otherwise, to consider a vote on a joint resolution to determine~~
 3 ~~whether that emergency shall be terminated, as required by 50 U.S.C. § 1622(b).~~

4 ~~113.—On information and belief, the President has not transmitted to Congress any~~
 5 ~~report on the total expenditures incurred by the United States government which are~~
 6 ~~directly attributable to the exercise of powers and authorities conferred by the declaration~~
 7 ~~of a national emergency in Executive Order 13873, as required by 50 U.S.C. § 1641(e).~~

8 ~~114.—On information and belief, the President did not consult with Congress, on~~
 9 ~~the threat posed by WeChat or otherwise, before issuing Executive Order 13943, as~~
 10 ~~required by 50 U.S.C. § 1703(a).~~

11 ~~115.—On information and belief, the President did not immediately transmit to the~~
 12 ~~Congress a report specifying, among other information required in 50 U.S.C. § 1703(b),~~
 13 ~~“the circumstances which necessitate such exercise of authority” and “the actions to be~~
 14 ~~taken in the exercise of those authorities[.]” Although the President did transmit a letter to~~
 15 ~~the Speaker of the House of Representatives and the President of the Senate on the same~~
 16 ~~day he issued Executive Order 13943, this letter merely repeats—often verbatim—the~~
 17 ~~vague and conclusory language contained in the Executive Order. This limited~~
 18 ~~information does not provide the Congress with sufficient information to exercise the kind~~
 19 ~~of ongoing oversight of the President required by both the IEEPA and the NEA.~~

20 ~~116.—The President has acted *ultra vires* by exercising emergency powers~~
 21 ~~purportedly authorized by the IEEPA without consulting with and reporting to Congress in~~
 22 ~~the manner prescribed by 50 U.S.C. §§ 1621–22, 1641(e), and 1703.~~

SIXTH CLAIM FOR RELIEF

(Ultra Vires (50 U.S.C. § 1701))

23
 24
 25 ~~117.1. Plaintiffs reallege and hereby incorporate by reference the allegations~~
 26 ~~contained in the preceding paragraphs of this Complaint.~~

27 ~~118.—50 U.S.C. § 1701 conditions the President’s exercise of the emergency~~
 28 ~~powers listed in Section 1702(a) on the President’s declaration of a national emergency~~

1 with respect to an “unusual and extraordinary threat, which has its source in whole or
 2 substantial part outside the United States[.]” Section 1701 further requires that “[a]ny
 3 exercise” of the powers granted in Section 1702(a) “to deal with any new threat shall be
 4 based on a new declaration of national emergency which must be with respect to such
 5 threat.”

6 ~~119. Executive Order 13943 cites the President’s declaration of a national
 7 emergency in Executive Order 13873 as the basis for his exercise of emergency powers
 8 purportedly granted by the IEEPA. Executive Order 13873, which was issued more than
 9 14 months before Executive Order 13943, does not mention WeChat and does not identify
 10 the app as a potential threat to the national security of the United States.~~

11 ~~120. The threat purportedly posed by WeChat constitutes a “new threat” within
 12 the meaning of 50 U.S.C. § 1701(b), and thus requires a new declaration of national
 13 emergency before the President exercises any presidential powers authorized by the
 14 IEEPA. The President has not issued such a new declaration of a national emergency with
 15 respect to the threat posed by WeChat.~~

16 ~~121. The President has acted *ultra vires* by exercising emergency powers
 17 purportedly authorized by IEEPA that depend on the President having declared a national
 18 emergency with respect to the threat posed by WeChat, in direct contravention of 50
 19 U.S.C. § 1701(b).~~

SEVENTH CLAIM FOR RELIEF

21 ~~(Religious Freedom Restoration Act – 42 USC § U.S.C. § 2000bb(1)(a))~~

22 ~~122.133.~~ Plaintiffs reallege and hereby incorporate by reference the allegations
 23 contained in the preceding paragraphs of this Complaint.

24 ~~123.134.~~ In 1993, Congress enacted the Religious Freedom Restoration Act
 25 (“RFRA), Pub. L. No. 103-31 (1993) (codified at 42 U.S.C. §§ 2000bb–2000bb-4).

26 ~~124.135.~~ RFRA prohibits the government from “substantially burden[ing] a
 27 person’s exercise of religion even if the burden results from a rule of general applicability”
 28 unless the government can demonstrate that the application of the burden to the person

1 is: (1) in furtherance of a compelling governmental interest; and (2) the least restrictive
 2 means of furthering that compelling governmental interest. 42 U.S.C. § 2000bb-1.

3 ~~125-136.~~ WeChat users in the United States ~~used~~ depend on WeChat to
 4 participate in ~~the conduct of~~ religious worship and other practices in accordance with the
 5 tenets and practices of various religions. ~~WeChat users in the United States use WeChat to~~
 6 ~~organize and participate in religious activities with other members who similarly use~~
 7 ~~WeChat regularly in order to worship and/or practice their religion~~ Plaintiff Bao, for
 8 example, is a member of New Life Chinese Alliance Church in New York. Due to the
 9 ongoing COVID-19 pandemic, he and his fellow congregants do not attend church or
 10 participate in other church activities in person. Instead, he and his fellow congregants rely
 11 on WeChat for religious activities —such as participating in Bible Study groups. Plaintiff
 12 Bao and his fellow congregants regularly participate in a Bible Study group on WeChat.

13 ~~137.~~ ~~The~~ Executive Order ~~will~~ 13943 and the Identification effectively ban
 14 WeChat in the United States. As a result in, Plaintiff Bao and his fellow congregants at the
 15 New Life Chinese Alliance Church will no longer be able to participate in religious
 16 activities using WeChat.

17 ~~138.~~ Executive Order 13943 and the Identification place a substantial burdens
 18 upon the practice burden on Bao's exercise of religion. This burden is not justified by a
 19 compelling governmental interest, and less restrictive alternatives exist for achieving the
 20 government's avowed interests in protecting national security. For example, the
 21 government could impose a narrow prohibition on the use of WeChat users in the United
 22 States by forcing them to abstain from participating in their practice by employees of the
 23 federal government and/or employees of the federal government's state, local, tribal, and
 24 territorial partners.

25 ~~126-139.~~ Because Executive Order 13943 and the Identification place a
 26 substantial burden on Plaintiff Bao's exercise of religion with other WeChat users or risk
 27 the threat of civil or criminal sanctions and violates RFRA and is neither justified by a
 28 compelling governmental interest nor the least restrictive means of achieving the

1 government's avowed interest in protecting national security, the Executive Order and
2 Identification violate Plaintiff Bao's rights protected by the Religious Freedom Restoration
3 Act.

4 **SEVENTH CLAIM FOR RELIEF**

5 **(Violation of the Administrative Procedure Act – 5 U.S.C. § 706)**

6 ~~127.140.~~ Plaintiffs hereby incorporate by reference the allegations contained in
7 the preceding paragraphs of this Complaint.

8 ~~128.141.~~ ~~The Secretary of Commerce published a document in the Federal~~
9 ~~Register on September 18, 2020 that identifies certain transactions related to WeChat" that~~
10 ~~are prohibited by EO 13943.~~—The Secretary's ~~action~~Identification constitutes "final
11 agency action" within the meaning of 5 U.S.C. § 704.

12 ~~129.142.~~—Under the Secretary's ~~definitions, the~~Identification, Executive Order
13 13943 prohibits, *inter alia*, "Any provision of services to distribute or maintain the
14 WeChat mobile application, constituent code, or mobile application updates"; "Any
15 provision of internet hosting services enabling the functioning or hosting of the WeChat
16 mobile application"; and "Any utilization of the WeChat mobile application's constituent
17 code. functions, or services in the functioning of software or services developed and/or
18 accessible within . . . the United States and its territories."

19 ~~130.~~—~~On September 18, 2020, the Secretary admitted, on national television, that~~
20 ~~his definitions of EO 13943 will "for all practical purposes" result in WeChat being "shut~~
21 ~~down in the U.S." as soon as the President's prohibition takes effect on September 20.~~

22 ~~143.~~ ~~The~~In issuing the Identification, Defendant Ross failed to consider relevant
23 data relating to the likely technological effects of each of the prohibitions on the
24 functionality of WeChat in the United States or the ability of WeChat users to use the app
25 in the United States. Defendant Ross and his staff did not articulate satisfactory
26 explanations that connect the facts relating to the likely technological effects of each of the
27 prohibitions to the conclusion recommending each prohibition. The technological effects
28 of these prohibitions are important aspects of the problem the Identification was

1 purportedly intended to address.

2 144. In issuing the Identification, Defendant Ross failed to consider a wealth of
3 available evidence indicating that a prohibition on new downloads of the WeChat app
4 would exacerbate rather than mitigate threats to the security of WeChat users' private data.
5 Defendant Ross and his staff did not articulate satisfactory explanations that connect the
6 facts relating to the risks associated with unpatched security vulnerabilities to the
7 conclusion recommending the prohibition on app updates. The risk of exacerbating cyber
8 threats to the security of users' private data represents an important aspect of the issue the
9 Identification was purportedly intended to address.

10 145. In issuing the Identification, Defendant Ross failed to consider a wealth of
11 available evidence demonstrating that WeChat users in the United States depend on
12 WeChat to communicate and share information with family, friends, and professional,
13 political, and religious contacts located both in the United States and abroad. Defendant
14 Ross and his staff did not articulate satisfactory explanations that connect the facts relating
15 to the widespread use of WeChat users' dependence on the app to the conclusion
16 recommending the wholesale ban of the app. WeChat users' dependence on the app for
17 personal communications and information represents an important aspect of the issue the
18 Identification was purportedly intended to address.

19 146. In issuing the Identification, Defendant Ross failed to consider whether
20 Tencent's three separate mitigation proposals, either individually or in concert, would
21 eliminate or mitigate the purported need for regulations of or prohibitions on transactions
22 related to WeChat.

23 147. On information and belief, the President and/or staff associated with the
24 Executive Office of the President intervened in the Commerce Department's negotiations
25 with Tencent in August and September 2020 for the purpose of preventing the parties to
26 these negotiations from reaching an agreement that would eliminate or mitigate the
27 purported need for regulations of or prohibitions on transactions related to WeChat. The
28 President and/or staff associated with the Executive Office of the President did so for

1 reasons unrelated to the purported security threat posed by WeChat, including but not
 2 limited to: (a) their disapproval of the content of communications and information shared
 3 on WeChat, and (b) their expectation that prohibiting transactions related to WeChat
 4 would benefit the President’s reelection campaign by further encouraging animus among
 5 the American electorate towards people of Chinese or Chinese-American ancestry.

6 148. Such reasons are not among the factors that Congress intended for executive-
 7 branch officials to consider when issuing regulations under the authority of the IEEPA.
 8 The President and/or staff associated with the Executive Office of the President
 9 communicated their reasons for disapproving Tencent’s mitigation proposals to Defendant
 10 Ross and/or his subordinates, and Defendant Ross’s consideration of these reasons played
 11 a substantial role in his decision to issue the Identification.

12 149. In issuing the Identification, Defendant Ross failed to consider CISA’s
 13 recommendation that Defendants issue a far narrower prohibition aimed at preventing the
 14 use of WeChat on the devices of State, Local, Tribal, and Territorial partners and critical
 15 infrastructure operators.

16 150. In issuing the Identification, Defendant Ross has not adequately explained
 17 the rationales for the Identification’s prohibitions, and has failed to consider regulatory
 18 alternatives. Defendant Ross has also failed to consider the prohibitions’ collateral effects,
 19 including how the prohibitions will reconfigure affected Internet infrastructure in ways that
 20 will decrease user privacy, over-block access to legal content, fuel Internet fragmentation,
 21 undermine Internet freedom, and interfere with or even end direct Internet traffic between
 22 the United States and China.

23 151. The Identification is therefore arbitrary, capricious, an abuse of discretion, or
 24 otherwise not in accordance of law, within the meaning of 5 U.S.C. § 706(2)(A).

25 131-152. Furthermore, the Secretary’s definitions of the transactions prohibited
 26 by EO 13943 Identification directly contravene Section 50 U.S.C. § 1702(b) by
 27 directly or indirectly regulating or prohibiting “personal communication[s],” that “do[]
 28 not involve a transfer of anything of value,” as well as the donation and coordination of

1 donations of “articles... intended to be used to relieve human suffering”~~and,~~ the
2 importation and/or exportation of “information or information materials,” ~~and~~
3 ~~“transactions ordinarily incident to travel to or from any country.”~~

4 ~~132, 153.~~ The ~~definitions are~~ Identification is therefore ~~arbitrary, capricious, an~~
5 ~~abuse of discretion, or otherwise not in accordance with law, and~~ in excess of statutory
6 jurisdiction, authority, or limitations, or short of statutory right, within the meaning of 5
7 U.S.C. § ~~706(2).~~ 706(2)(B), and arbitrary, capricious, an abuse of discretion, or otherwise
8 not in accordance with law, within the meaning of 5 U.S.C. § 706(2)(A).

9 ~~133.~~ ~~Furthermore, the Identification was promulgated without notice and~~
10 ~~comment rulemaking as required by the APA. 5 U.S.C. § 553(b), (c).~~

11 ~~134.~~ ~~The Identification is therefore in direct contravention of the APA and must~~
12 ~~be vacated.~~

13 PRAYER FOR RELIEF

14 WHEREFORE, Plaintiffs ~~and the Class~~ pray for relief and judgment as follows:

- 15 1. Declaring that Executive Order 13943 ~~is~~ and the Identification are
16 unconstitutional under the First Amendment;
- 17 2. Declaring that Executive Order 13943 ~~is~~ and the Identification are
18 unconstitutional under the Fifth Amendment;
- 19 3. Declaring that Executive Order 13943 and the Identification do not comply
20 with the limitations on presidential power in the National Emergency Act and the
21 International ~~Economic~~-Emergency Economic Powers Act, and ~~is~~ are thus *ultra vires*;
- 22 4. Declaring that Executive Order 13943 ~~violates~~ and the Identification violate
23 the Religious Freedom Restoration Act;
- 24 5. Declaring that the ~~Secretary’s September 18, 2020~~ Identification of
25 ~~Prohibited Transactions violated~~ violates the APA;
- 26 6. Preliminarily and permanently enjoining Defendants from enforcing the
27 Executive Order and the Identification ~~to prohibit the use of WeChat in the United States~~
28 ~~by individual users, businesses and groups;~~

1 7. Preliminarily and permanently staying the implementation date of any of the
2 penalty provisions ~~of applicable to the~~ Executive Order and the Identification; and

3 ///

4 ///

5 ///

6 8. Granting such other and further relief as this Court may deem just and
7 proper, including an award to Plaintiffs of the costs of this suit and reasonable attorneys'
8 fees and litigation expenses under the Equal Access to Justice Act, 28 U.S.C. § 2412(d).

9 DATED: ~~September 18~~December 7, Respectfully submitted,
10 2020

ROSEN BIEN GALVAN & GRUNFELD LLP

11 By: /s/ Michael W. Bien

12 Michael W. Bien

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