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18 Attorneys for Plaintiffs

19 UNITED STATES DISTRICT COURT

20 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

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

23 Plaintiffs,

24 v.

25 JOSEPH R. BIDEN, JR., in his official  
 capacity as President of the United States, and  
 26 GINA RAIMONDO, in her official capacity as  
 Secretary of Commerce,

27 Defendants.

Case No. 3:20-cv-05910-LB

**JOINT CASE MANAGEMENT  
CONFERENCE STATEMENT**

Judge: Hon. Laurel Beeler

Trial Date: None Set

1 Plaintiffs U.S. WeChat Users Alliance (“USWUA”), Chihuo, Inc., Brent Coulter,  
2 Fangyi Duan, Jinneng Bao, Elaine Peng, and Xiao Zhang (“Plaintiffs”), and Defendants  
3 President Joseph R. Biden, Jr. and Secretary of Commerce Gina Raimondo (“Defendants”)  
4 (collectively, “the parties”), through counsel, have met and conferred and submit the  
5 following case management statement regarding the status of proceedings in this case.

6 1. Plaintiffs filed this case on August 21, 2020, seeking declaratory and  
7 injunctive relief against the President and the Secretary of Commerce in relation to  
8 Executive Order No. 13943, “Addressing the Threat Posed by WeChat, and Taking  
9 Additional Steps to Address the National Emergency with Respect to the Information and  
10 Communications Technology and Services Supply Chain” (“WeChat Executive Order”),  
11 85 Fed. Reg. 48641 (Aug. 6, 2020).

12 2. On September 18, 2020, the Secretary identified six categories of  
13 prohibitions pursuant to the WeChat Executive Order (“Prohibitions”). Plaintiffs  
14 subsequently amended their complaint to challenge the Secretary’s Prohibitions and sought  
15 to preliminarily enjoin the Prohibitions.

16 3. On September 19, 2020, the Court granted Plaintiffs’ motion to preliminarily  
17 enjoin the Secretary’s six identified prohibitions, and subsequently declined to stay its  
18 injunction pending Defendants’ appeal to the Court of Appeals for the Ninth Circuit.

19 4. On February 12, 2021, the Court stayed this case to permit the incoming  
20 Administration to review the Secretary’s prohibitions regarding the WeChat mobile  
21 application at issue in this case.

22 5. Based on that review, on June 11, 2021, the President issued Executive  
23 Order No. 14034, Protecting United States Persons’ Sensitive Data from Foreign  
24 Adversaries, 86 Fed. Reg. 31,423, 31,424-25 (June 11, 2021) (“EO 14034”), which, among  
25 other things, revoked the prior administration’s WeChat Executive Order, *see id.* § 1, and  
26 further directed that all Executive Branch agencies “promptly take steps to rescind any  
27 orders, rules, regulations, guidelines, or policies . . . implementing or enforcing” the  
28 WeChat Executive Order, and abolish “any personnel positions, committees, task forces,

1 or other entities established pursuant to” the WeChat Executive Order. *Id.* § 2(a).

2 6. Pursuant to EO 14034, on June 23, 2021, the Secretary of Commerce  
3 rescinded the Prohibitions. *See* Rescission of Identification of Prohibited Transactions  
4 With Respect to TikTok and WeChat, 86 Fed. Reg. 32,757 (June 23, 2021).

5 7. On July 29, 2021, the parties filed a Joint Case Management Statement, ECF  
6 No. 161, informing the Court (among other things) that in light of the President’s  
7 revocation of the WeChat Executive Order pursuant to EO 14034 and the Secretary’s  
8 actions to comply with EO 14034, the parties do not anticipate further litigation in this  
9 matter, except that Plaintiffs intend to seek attorneys’ fees and costs pursuant to the Equal  
10 Access to Justice Act (“EAJA”), 28 U.S.C. § 2412, which could involve motion practice.  
11 The parties stated that they would meet and confer regarding Plaintiffs’ EAJA request and  
12 request a briefing schedule if they were unable to resolve the issue without Court  
13 intervention.

14 8. The parties are currently conferring regarding Plaintiffs’ request for fees and  
15 costs. On August 6, 2021, Plaintiffs submitted a written proposal regarding EAJA fees and  
16 costs to undersigned counsel for Defendants. At Defendants’ request, Plaintiffs submitted  
17 more detailed billing records and other information on August 19, 2021. Defendants are  
18 still working through that information, and have requested further information from  
19 Plaintiffs. Defendants anticipate responding to Plaintiffs’ proposal no later than September  
20 28, 2021; however, such response will be based on the information provided to date. Any  
21 settlement would be subject to the required authorization processes within both the  
22 Department of Justice and the Department of Commerce.

23 9. In light of the current status, the parties respectfully submit that the case  
24 management conference currently scheduled for September 30, 2021, may not be  
25 necessary, unless the Court wishes to hear from the parties directly regarding the current  
26 status. If not, the parties propose instead to file a further case management statement or  
27 joint status report no later than October 21, 2021, informing the Court of the status of their  
28 fee negotiations and, if they have not yet reached an agreement, whether they seek a

1 referral to mediation or a briefing schedule to resolve the issue.

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3 DATED: September 23, 2021

Respectfully submitted,

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ROSEN BIEN GALVAN & GRUNFELD LLP

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By: */s/ Van Swearingen*

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10 DATED: September 23, 2021

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By: */s/ Serena Orloff*

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