

1 MICHAEL W. BIEN – Cal. Bar No. 096891  
 VAN SWEARINGEN – Cal. Bar No. 259809  
 2 ALEXANDER GOURSE – Cal. Bar No. 321631  
 AMY XU – Cal. Bar No. 330707  
 3 ROSEN BIEN GALVAN & GRUNFELD LLP  
 101 Mission Street, Sixth Floor  
 4 San Francisco, California 94105-1738  
 Telephone: (415) 433-6830  
 5 Facsimile: (415) 433-7104  
 Email: mbien@rbgg.com  
 6 vswearingen@rbgg.com  
 agourse@rbgg.com  
 7 axu@rbgg.com

8 KELIANG (CLAY) ZHU – Cal. Bar No. 305509  
 DEHENG LAW OFFICES PC  
 9 7901 Stoneridge Drive #208  
 Pleasanton, California 94588  
 10 Telephone: (925) 399-5856  
 Facsimile: (925) 397-1976  
 11 Email: czhu@dehengsv.com

12 ANGUS F. NI – Wash. Bar No. 53828\*  
 AFN LAW PLLC  
 13 502 Second Avenue, Suite 1400  
 Seattle, Washington 98104  
 14 Telephone: (773) 543-3223  
 Email: angus@afnlegal.com  
 15 \* *Pro Hac Vice* application forthcoming

16 Attorneys for Plaintiffs

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18 UNITED STATES DISTRICT COURT

19 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

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

22 Plaintiffs,

23 v.

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

26 Defendants.

27

28

Case No. 3:20-cv-05910

**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 applications (“app”), with over 1 billion monthly active users.<sup>1</sup>

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

15 3. WeChat is also used for numerous societally important purposes, including  
16 by public institutions. For example, as the coronavirus pandemic continues to separate  
17 people physically, WeChat has been used in the United States by police departments to  
18 inform the public about testing center locations, by volunteers to organize the delivery of  
19 medical supplies, and by families to stay in touch with isolated elderly relatives in nursing

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21 <sup>1</sup> 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 <sup>2</sup> 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 <sup>3</sup> 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 homes. WeChat is also used by individuals and groups—including churches—for  
2 religious and cultural purposes: group prayer, organizing for holidays and events, taking  
3 care of the poor, sick and infirm, and education.

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

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

15 6. On August 6, 2020, the President issued Executive Order 13943 entitled  
16 “Addressing the Threat Posed by WeChat, and Taking Additional Steps To Address the  
17 National Emergency With Respect to the Information and Communications Technology  
18 and Services Supply Chain,” 85 FR 48641 (“the Executive Order”). Citing national  
19 security concerns, the Executive Order bans what appears to be all uses of WeChat by  
20 anyone within the United States as well as “U.S. persons” outside the United States.  
21 Section 1(a) of the Executive Order prohibits people and property subject to U.S.  
22 jurisdiction from carrying out “transactions” with WeChat after 45 days of the Executive  
23 Order’s issuance. Section 2(a) prohibits any transaction “by a United States person or  
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25 <sup>4</sup> 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.cnn.com/2020/05/08/tencent-wechat-surveillance-help-censorship-in-](https://www.cnn.com/2020/05/08/tencent-wechat-surveillance-help-censorship-in-china.html)  
28 [china.html](https://www.cnn.com/2020/05/08/tencent-wechat-surveillance-help-censorship-in-china.html); 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-](https://www.brennancenter.org/our-work/analysis-opinion/government-expanding-its-social-media-surveillance-capabilities)  
[social-media-surveillance-capabilities](https://www.brennancenter.org/our-work/analysis-opinion/government-expanding-its-social-media-surveillance-capabilities).

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

10 7. Neither the Executive Order itself nor the White House provided concrete  
 11 evidence to support the contention that using WeChat in the United States compromises  
 12 national security. Notably, no other nation has implemented a comprehensive WeChat ban  
 13 on the basis of any like-finding that WeChat is a threat to national security.<sup>6</sup> The  
 14 Executive Order was, however, issued in the midst of the 2020 election cycle, during a  
 15 time when President Trump has made numerous anti-Chinese statements that have  
 16 contributed to and incited racial animus against persons of Chinese descent<sup>7</sup>—all outside  
 17 of the national security context.

18 8. In a stark violation of the First Amendment, the Executive Order targets and  
 19

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

22 <sup>6</sup> 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 <sup>7</sup> 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-trumps-racist-attacks-too/>;  
 27 Li Zhou, *Trump’s racist references to the coronavirus are his latest effort to stoke xenophobia*, VOX (June 23, 2020),  
 28 <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 silences WeChat users, the overwhelming majority of whom are members of the Chinese  
2 and Chinese-speaking communities. It regulates constitutionally protected speech,  
3 expression, and association and is not narrowly tailored to restrict only that speech which  
4 presents national security risks to the United States. Accordingly, it is unconstitutionally  
5 overbroad. Indeed, banning the use of WeChat in the United States has the effect of  
6 foreclosing all meaningful access to social media for members of the Chinese-speaking  
7 community, such as Plaintiffs, who rely on it to communicate and interact with others like  
8 themselves. The ban on WeChat, because it substantially burdens the free exercise of  
9 religion, also violates the Religious Freedom Restoration Act.

10       9.       The Executive Order runs afoul of the Fifth Amendment’s Due Process  
11 Clause by failing to provide notice of the specific conduct that is prohibited; because of  
12 this uncertainty, WeChat users in the United States are justifiably fearful of using WeChat  
13 in any way and for any purpose—and also of losing access to WeChat. Since the  
14 Executive Order, numerous users, including Plaintiffs, have scrambled to seek alternatives  
15 without success. They are now afraid that by merely communicating with their families,  
16 they may violate the law and face sanctions.

17       10.       WeChat is the only “super-app” with a natively Chinese interface designed  
18 for Chinese speakers. That is why it is the dominant social media and e-commerce  
19 application amongst the global Chinese diaspora, which include Chinese communities in  
20 the United States.<sup>8</sup> These individuals, particularly those who do not speak English, are  
21 ***completely reliant*** on WeChat to communicate, socialize, and express themselves. As  
22 such, by prohibiting the use of only WeChat but not any similar applications (ones not  
23 made in China and without Chinese interfaces), the Executive Order singles out people of  
24 Chinese and Chinese-American ancestry and subjects them to disparate treatment on the  
25 basis of race, ethnicity, nationality, national origin, and alienage. In doing so, the  
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27 <sup>8</sup> 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 Executive Order violates the Equal Protection Clause.

2 11. Finally, in issuing the Executive Order, the president acted beyond his  
3 authority provided by the International Emergency Economic Powers Act, which precludes  
4 the President from “*directly or indirectly*” regulating personal communications and the  
5 international exchange of information.

6 12. The U.S. WeChat Users Alliance (“USWUA”), Chihuo, Inc., Brent Coulter,  
7 Fangyi Duan, Jinneng Bao, Elaine Peng, and Xiao Zhang (collectively, “Plaintiffs”), bring  
8 this suit to challenge the Executive Order, which eviscerates an irreplaceable cultural  
9 bridge that connects Plaintiffs to family members, friends, business partners, customers,  
10 religious community members, and other individuals with common interests within the  
11 Chinese diaspora, located both in and outside of the United States. The Executive Order  
12 has already harmed Plaintiffs, who are plagued with fear for the loss of their beloved  
13 connections, whether it be with friends, family, community, customers, aid recipients of  
14 the charities they run, or even strangers whose ideas enrich their lives. They have been  
15 forced to divert time, energy, and money to seek alternative communication platforms,  
16 download and save irreplaceable digital histories, plan for business closures, find other  
17 sources of information, and try to obtain alternative contact information for those from  
18 whom they will soon be separated. Even if they succeed to some extent in their mitigation  
19 efforts, Plaintiffs will never be able to replace the full spectrum of the social interactivity  
20 that WeChat offers, nor will they be able to find any social networking platform with  
21 anything close to the same level of participation by the global Chinese diaspora—this is  
22 because WeChat’s network effects, generated by its 1 billion-plus daily users, is  
23 irreplaceable.

24 13. In short, the threatened displacement of these WeChat users from their public  
25 space is an irreparable harm that requires judicial intervention.

26 14. For these reasons, and those discussed below, the Court should (1) declare  
27 that the Executive Order is and the Secretary of Commerce’s September 18, 2020,  
28 Identification of Prohibited Transactions are unlawful and unconstitutional; and (2) enjoin

1 Defendants from enforcing the Executive Order or the Secretary's Identification to prohibit  
2 the use of WeChat in the United States ~~by individual users, businesses and groups, and (3)~~  
3 ~~stay the implementation date of any of the penalty provisions of Executive Order until a~~  
4 ~~reasonable time after the Secretary of Commerce promulgates definitions of "transactions"~~  
5 ~~under the Executive Order, directly or indirectly.~~

## 6 JURISDICTION AND VENUE

7 15. The claims asserted herein arise under and pursuant to the Constitution and  
8 laws of the United States. This Court has jurisdiction over the subject matter of this action  
9 pursuant to 28 U.S.C. § 1331.

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

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

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

## 20 PARTIES

21 19. Plaintiff U.S. WeChat Users Alliance ("USWUA") is a New Jersey nonprofit  
22 organization that is in the process of being registered under Internal Revenue Code section  
23 501(c)(3), established by individuals in the United States for the purpose of opposing the  
24 Executive Order. Plaintiff USWUA is made up of WeChat users located throughout the  
25 United States who are not affiliated with WeChat, its parent company Tencent Holdings  
26 Ltd. ("Tencent"), nor any political party or foreign government. Plaintiff USWUA runs on  
27 public donations from WeChat users and organizes its efforts on WeChat. Plaintiff  
28 USWUA is made up of individuals who want to continue using WeChat within the United

1 States and are currently suffering and will continue to suffer an injury based on the  
2 Defendants' actions.

3         20. Plaintiff Elaine Peng is a United States citizen residing in Castro Valley,  
4 California. Plaintiff Peng founded the Mental Health Association for Chinese  
5 Communities ("MHACC") in 2013 to provide mental health education, suicide prevention,  
6 assistance, and other resources to her local Chinese community that is underserved by the  
7 mental health profession due to language and cultural barriers. As president of MHACC,  
8 Plaintiff Peng strives to make mental health programs available to those in need and has  
9 received multiple awards for her work. Like much of the Chinese population in the United  
10 States, Plaintiff Peng uses WeChat as her exclusive means to connect with her Chinese  
11 families and friends, domestic or abroad. As most of the population MHACC serves relies  
12 on WeChat to communicate, use of WeChat is also integral to MHACC's mission to  
13 provide mental health services and support to its members.

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

1 Coulter would lose access to many of the relationships that he has built throughout his  
2 studies and career.

3         22. Plaintiff Xiao Zhang is a Chinese citizen with a valid visa residing in  
4 Houston, Texas. She is employed as an engineer and founded a nonprofit organization  
5 known as Hita Education Foundation that supports underserved students at the high school  
6 in her hometown in China. Plaintiff Zhang uses WeChat to speak with administrators,  
7 teachers, parents of school children, and to help identify underserved Chinese students who  
8 would benefit from the program. Plaintiff Zhang’s nonprofit organization currently sends  
9 donations of 300 yuan (approximately \$43 dollars) to seven students per month to pay for  
10 meals and school supplies. Plaintiff Zhang also uses WeChat to transfer the funds to each  
11 individual student, and WeChat is her exclusive means to connect with her Chinese-  
12 speaking family members and friends, domestic or abroad.

13         23. Plaintiff Fangyi “Amy” Duan is a Chinese citizen with a valid visa, and  
14 resides in Santa Clara, California. Plaintiff Duan is employed as the chief executive  
15 officer of Plaintiff Chihuo, Inc. (“Chihuo”), a corporation that is dually registered in both  
16 California and Delaware.

17         24. Plaintiff Chihuo is a media and online retailer that creates content regarding  
18 Chinese restaurants and cuisine for people residing in the United States. Plaintiff Chihuo  
19 provides U.S. based merchants an e-commerce platform for targeting Chinese-speaking  
20 consumers. Plaintiff Chihuo serves its customers by providing targeted marketing and  
21 advertising services online. Plaintiff Chihuo delivers its targeted advertising and  
22 marketing services primarily on several WeChat official accounts through its various  
23 functions, including WeChat Moments. Plaintiff Chihuo employs or contracts with  
24 approximately thirty people as part of its business. Plaintiff Chihuo’s WeChat accounts  
25 cover 14 major metropolitan areas in the United States and are enjoyed by more than  
26 640,000 readers.

27         25. Plaintiff Jinneng Bao is a United States permanent resident and lives in  
28 Nassau County, New York. He is self-employed and runs several businesses including a

1 construction company primarily serving Chinese-speaking clients in New York. Plaintiff  
2 Bao actively attends a Chinese church in New York and participates in Bible studies  
3 regularly on WeChat. His Bible study group consists of mostly Chinese-speaking  
4 members. Due to the pandemic, Plaintiff Bao’s Bible study group has stopped meeting in  
5 person, and WeChat is the only way the group currently maintains communications with  
6 one another.

7 26. Defendant Donald J. Trump (“President Trump”) is the President of the  
8 United States. He is sued in his official capacity. In that capacity, he issued the Executive  
9 Order challenged in this suit.

10 27. Defendant Wilbur Ross (“Secretary Ross”) is the United States Secretary of  
11 Commerce. He is sued in his official capacity. In the Executive Order, the Secretary is  
12 authorized to take actions, including adopting rules and regulations, to implement the  
13 Executive Order.

## 14 **FACTUAL ALLEGATIONS**

### 15 **A. WeChat and App Capabilities**

16 28. WeChat is one of the most popular messaging applications in the world, with  
17 a monthly user base of more than 1 billion people.<sup>9</sup> Nearly every person in China with an  
18 online presence has at least one WeChat account, and over one-third of them spend four  
19 hours or more on the app every day—making WeChat an indispensable part of many  
20 peoples’ lives and work.<sup>10</sup>

21 29. Though WeChat began as a messaging service, it is now a “super-app” that  
22 serves a multitude of communicative needs, including making telephone calls, video  
23 conferencing, sharing photos, commenting on other users’ posts, making payments, and  
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26 <sup>9</sup> Arjun Kharpal, Everything you need to know about WeChat—China’s billion-user  
27 messaging app, CNBC (Feb. 3, 2019), <https://www.cnbc.com/2019/02/04/what-is-wechat-china-biggest-messaging-app.html>.

28 <sup>10</sup> Li Yuan, To Cover China, There’s No Substitute for WeChat, N.Y. TIMES (Jan. 9,  
2019), <https://www.nytimes.com/2019/01/09/technology/personaltech/china-wechat.html>

1 still other purposes.<sup>11</sup>

2         30. One of WeChat’s primary uses is the app’s messaging capabilities, which  
3 include both text and voice messaging. Messaging through WeChat is the preferred  
4 method of communication in China, even when doing business. Through the app’s  
5 messaging capabilities, users can have numerous ongoing conversations at one time, and  
6 can also set up group texts within a family, a business, or among friends, to communicate  
7 with the whole group simultaneously.

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

12         32. WeChat includes a feature called “Moments” through which users can  
13 upload photos, videos, share news articles, and compose text. WeChat users can comment  
14 or like the post, similar to the capabilities of apps like Facebook or Instagram.

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

19         34. WeChat has increasingly been adopted by older age groups in China,  
20 including a significant percentage of those over 60.<sup>12</sup> Even older users in their 70s use  
21 WeChat at high levels for messaging, voice calls, reading articles, and making payments.<sup>13</sup>

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24 <sup>11</sup> Bani Sapra, *This Chinese super-app is Apple’s biggest threat in China and could be a*  
25 *blueprint for Facebook’s future. Here’s what it’s like to use WeChat, which helps a billion*  
26 *users order food and hail rides*, BUSINESS INSIDER (Dec. 21, 2019),  
<https://www.businessinsider.com/chinese-superapp-wechat-best-feature-walkthrough-2019-12>.

27 <sup>12</sup> 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>.

28 <sup>13</sup> Mansoor Iqbal, *WeChat Revenue and Usage Statistics*, BUSINESS OF APPS (updated  
July 30, 2020), <https://www.businessofapps.com/data/wechat-statistics/>.

1           **B. WeChat Usage Specifically in the United States**

2           35. There are approximately 19 million daily active WeChat users in the United  
3 States.<sup>14</sup> WeChat is very widely used within the Chinese-American community, which is  
4 estimated to be four to five million people.<sup>15</sup> WeChat is the dominant method for anyone  
5 in the United States who regularly communicates with people in China because it is free, is  
6 more convenient, and has better reception than traditional telephone calls. WeChat is used  
7 in the United States not only to keep in touch with friends and family, but also academics,  
8 professionals, and business people to discuss matters of professional importance. In the  
9 United States, the vast majority of the Chinese-speaking population is on WeChat, creating  
10 network-effects that encourage others to join and participate lest they be cut off entirely  
11 from family, friends, and business circles.<sup>16</sup> Simply put, WeChat is irreplaceable because  
12 no other app has anywhere near the same number of users and engagement among the  
13 Chinese-speaking community in the United States.

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

21           37. The importance of WeChat to Chinese Americans cannot be overstated

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23 <sup>14</sup> Krystal Hu, *WeChat U.S. ban cuts off users link to families in China*, REUTERS (Aug. 7,  
24 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>.

25 <sup>15</sup> Gustavo Lopez, Neil G. Ruiz, and Eileen Patten, *Key facts about Asian Americans, a  
26 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 <sup>16</sup> 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 because a significant portion of these individuals speak little or no English. According to a  
 2 study by the Pew Research Center, 41% of the Chinese population in the United States are  
 3 not English proficient.<sup>17</sup> Accordingly, a blanket prohibition on WeChat means that  
 4 millions of individuals in the United States will be unable to find a comparable substitute  
 5 on apps such as Facebook, which are designed for English-speaking users and primarily  
 6 have English-speaking user networks within the United States.

7 38. WeChat users in the United States use the app to engage in, organize, and  
 8 publicize religious and cultural practices. For instance, various churches with primarily  
 9 Chinese congregants have WeChat profiles and stream their services online.<sup>18</sup> The Church  
 10 of Jesus Christ of Latter-Day Saints uses WeChat to reach Chinese-American members  
 11 and potential congregants within China.<sup>19</sup> WeChat users in the United States attend and  
 12 participate in religious services or events, such as funerals, weddings, or other gatherings  
 13 through the app. Plaintiff Jinneng Bao relies on WeChat exclusively to attend regular  
 14 Bible studies hosted by his Chinese church in New York. WeChat users in the United  
 15 States organize and celebrate various religious and cultural holidays through their activity  
 16 in WeChat groups. They post Moments about holidays such as the Chinese New Year, the  
 17 Mid-Autumn Moon Festival, Ching Ming Festival (when Chinese people around the world  
 18 visit the tombs of their departed loved ones), and the Duan Wu Festival (popularly known  
 19

20 <sup>17</sup> *English proficiency of Chinese population in the U.S.*, PEW RESEARCH CENTER (July 6,  
 21 2017), <https://www.pewsocialtrends.org/chart/english-proficiency-of-chinese-population-in-the-u-s/>.

22 <sup>18</sup> Feng Long, *Leveraging Tech for Chinese Evangelism*, SIERRAPACIFIC (May 15, 2020),  
 23 <https://www.undeniableblessing.org/blog/Leveraging-Tech-for-Chinese-Evangelism>  
 24 (Oakland pastor who uses WeChat); MID-HUDSON CHINESE CHRISTIAN CHURCH (NY),  
<https://www.mhccc.org/> (last visited Aug. 20, 2020); BRENTWOOD BAPTIST CHURCH (TN)  
<https://brentwoodbaptist.com/chinese/> (last visited Aug. 20, 2020).

25 <sup>19</sup> 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>).

1 in the U.S. as the day when Chinese communities host dragon boat races). Because events,  
2 educational or celebratory, are frequently discussed and transmitted through social  
3 networks on WeChat, users rely on WeChat to learn about and celebrate religious and  
4 cultural events with their community members online.

5 39. In the United States, WeChat users organize around political causes through  
6 WeChat. For instance, many WeChat groups were used to organize, campaign, and raise  
7 funds in the 2016 presidential election, and users in the United States have similarly used  
8 WeChat to support candidates in the 2020 presidential election cycle.<sup>20</sup> Plaintiff Peng is an  
9 active member of several WeChat groups that discuss issues pertaining to the U.S. 2020  
10 election and publish information on how to become a registered voter. Asian-Americans  
11 who organized to oppose a Democrat-backed ballot initiative in California, which would  
12 have reversed the state's ban on race-conscious admissions, did so primarily through  
13 WeChat.<sup>21</sup> Organizations and causes wanting to reach Chinese-Americans use WeChat  
14 groups to raise awareness about demonstrations, spread voter education materials, and  
15 campaign for various candidates.

16 40. WeChat is integral for the spread of current events and news within Chinese  
17 communities. WeChat users use the app to read about current events and the news,  
18 including media from the United States, China, and around the world. Plaintiffs Zhang  
19 and Peng frequently use WeChat to read, share, and respond to news items that their  
20 WeChat contacts post to their Moments. Plaintiffs then comment, like, and share various  
21 news items that they receive from their WeChat contacts. Journalists who cover issues  
22 pertaining to China and Chinese communities rely on WeChat to investigate issues and  
23 communicate with people to interview. Large Chinese-language newspapers in the U.S.,  
24

25 <sup>20</sup> See Wanning Sun, *Why Trump's WeChat ban does not make sense—and could actually*  
26 *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>.

27 <sup>21</sup> Alia Wong, *The App at the Heart of the Movement to End Affirmative Action*, THE  
28 ATLANTIC (Nov. 20, 2018), <https://www.theatlantic.com/education/archive/2018/11/asian-americans-wechat-war-affirmative-action/576328/>.

1 such as *Sing Tao Daily* and *World Journal*, publish news stories through their WeChat  
2 accounts.

3 41. Government entities in areas with significant numbers of Chinese  
4 immigrants or Chinese Americans use WeChat as a method of communicating with their  
5 constituents. For instance, the police department in Alhambra, California began using  
6 WeChat in 2015 to provide updates about local law enforcement efforts.<sup>22</sup> The cities of  
7 Arcadia, San Gabriel, and Monterey Park in California have official WeChat accounts,  
8 which allow them to communicate with Chinese-speaking populations in their own  
9 language.<sup>23</sup> Local governments have used WeChat messaging as a way to send emergency  
10 notifications and provide public notice for local governance proposals.

11 42. During the COVID-19 pandemic, WeChat users have relied even more on  
12 the app to communicate and organize within their communities. In February 2020,  
13 volunteers in the Bay Area used WeChat to organize and send medical supplies to Wuhan,  
14 China at the start of the worldwide pandemic.<sup>24</sup> As travel restrictions emerged in the  
15 United States, WeChat users relied on the app in order to communicate with family  
16 members that they cannot visit in person in their home towns, in other areas of the United  
17 States, and around the world. People in the United States use the app to visit with elderly  
18

19 <sup>22</sup> Ashley Fan, *Some San Gabriel Valley Communities Could Be Seriously Affected by*  
20 *Trump's WeChat Ban*, SAN GABRIEL VALLEY TRIB. (Aug. 10, 2020),  
<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*  
21 *Immigrants*, KPCC (Jan. 20, 2015),  
22 <https://www.scpr.org/blogs/multiamerican/2015/01/20/17819/alhambra-police-join-wechat-to-chinese/>.

23 <sup>23</sup> Ashley Fan, *Some San Gabriel Valley Communities Could Be Seriously Affected by*  
24 *Trump's WeChat Ban*, SAN GABRIEL VALLEY TRIB. (Aug. 10, 2020),  
<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-became-alhambras-weibo-wechat-guru/>.

27 <sup>24</sup> Devin Katayama, Ericka Cruz Guevarra & Alan Montecillo, “*That’s Where I Grew*  
28 *Up’: The Wuhan Natives Organizing Aid from the Bay*, KQED (Feb. 19, 2020),  
<https://www.kqed.org/news/11802206/thats-where-i-grew-up-the-wuhan-natives-organizing-aid-from-the-bay>.

1 loved ones in nursing homes and hospitals, as well as with COVID-19 patients, who  
 2 cannot be visited in person due to pandemic-related restrictions. Information about the  
 3 pandemic, including regarding COVID-19 testing, prevention methods, and government  
 4 responses to the pandemic, are broadly shared and discussed in the United States through  
 5 WeChat groups and posts. For instance, a local police department in California posted  
 6 information about times and locations for drive-up and walk-up COVID-19 testing on its  
 7 WeChat profile. Similarly, doctors used WeChat extensively to spread information on the  
 8 prevention of COVID-19 in the Chinese communities in Sacramento, California.<sup>25</sup>  
 9 Organizations, such as Plaintiff Peng’s MHACC, make vital mental health programs  
 10 available to their communities through WeChat, in a world where people are struggling  
 11 with the long-term isolation associated with the pandemic.

12 **PRESIDENT TRUMP’S EXECUTIVE ORDERS AND**  
 13 **EMERGENCY DECLARATION**

14 **A. Executive Order 13873**

15 43. Prior to the issuance of the Executive Order challenged by this lawsuit, on  
 16 May 15, 2019, President Trump issued Executive Order 13873, titled “Securing the  
 17 Information and Communications Technology Services Supply Chain.” 84 FR 22689  
 18 (May 15, 2019). Executive Order 13873 declares a national emergency with respect to the  
 19 threat posed by unidentified “vulnerabilities in information and communications  
 20 technology and services[.]”

21 44. According to this Order, these unidentified vulnerabilities constitute an  
 22 “unusual and extraordinary threat to the national security, foreign policy, and economy of  
 23 the United States,” due in part to the “unrestricted acquisition or use in the United States of  
 24 information and communications technology or services designed, developed,  
 25 manufactured, or supplied by persons owned by, controlled by, or subject to the  
 26

27 <sup>25</sup> Theodora Yu, *To Combat Coronavirus, These Doctors Are Helping Sacramento’s*  
 28 *Chinese Community on WeChat*, SAC. BEE (Feb. 27, 2020), <https://www.sacbee.com/latest-news/article240662256.html>.

1 jurisdiction of foreign adversaries[.]” The threat, according to the May 15, 2019 Order,  
2 “exists both in the case of individual acquisitions or uses of such technology or services,  
3 and when acquisitions or uses of such technologies are considered as a class.” Executive  
4 Order 13873 does not identify specific countries or companies that pose a national security  
5 threat.

6 **B. Executive Order 13943**

7 45. More than fourteen months later, on August 6, 2020, President Trump issued  
8 Executive Order 13943, titled “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.” 85 FR 48641 (Aug. 6, 2020).  
11 Executive Order 13943 states that WeChat “automatically captures vast swaths of  
12 information from its users,” and that the data collected by WeChat “threatens to allow the  
13 Chinese Communist Party access to Americans’ personal and proprietary information.”  
14 According to this Order, the data collected by WeChat also “captures the personal and  
15 proprietary information of Chinese nationals visiting the United states, thereby allowing  
16 the Chinese Communist Party a mechanism for keeping tabs on Chinese citizens who may  
17 be enjoying the benefits of a free society for the first time in their lives.”

18 46. 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 48637 (Aug. 6,  
23 2020). The Executive Orders regulating WeChat and TikTok—both issued on the same  
24 day—rely on powers purportedly made available by the national emergency declared in  
25 Executive Order 13873, issued over a year earlier on May 15, 2019.

26 47. 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       48. Executive Order 13943, by its terms, may apply not only to WeChat, its  
10 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       49. 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 50. 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 transaction, and criminal penalties of up to \$1 million  
7 plus 20 years in prison. *See* 50 U.S.C. § 1705(b)-(c).

8 **C. The Secretary of Commerce Identifies the Transactions Prohibited by**  
9 **EO 13943**

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

13 52. The Identification sets forth eleven defined terms and identifies seven  
14 “transactions” to be prohibited pursuant to the Executive Order.

15 53. For example, the Identification defines “person” as “an individual or entity.”

16 54. It also defines “Transaction” to mean “any acquisition, importation, transfer,  
17 installation, dealing in, or use of any information and communications technology or  
18 service.”

19 55. It then states that the transactions prohibited by EO 13943 include, *inter alia*:

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

25 b. “Any provision of internet hosting services enabling the functioning  
26 or optimization of the WeChat mobile application, within the land and maritime borders of  
27 the United States and its territories.”

28 c. “Any provision of content delivery services enabling the functioning

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

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

10 56. In short, the Identification sets forth a de facto ban of WeChat.

11 57. On September 18, 2020, multiple Administration officials confirmed the  
12 purpose and intent of the Identification as being the eventual, complete prohibition of any  
13 use of WeChat in the United States.

14 58. For example, on September 18, 2020, Secretary of Commerce Wilbur Ross  
15 stated on Fox Business News that “WeChat is essentially a funds transfer and payment  
16 processing mechanism. For all practical purposes, it will be shut down in the U.S., but only  
17 in the U.S. as of midnight on Monday by the Commerce Department rule.”<sup>26</sup>

18 59. Mr. Ross also stated that “WeChat is essentially a funds transfer and  
19 payment processing mechanism.” This is incorrect, as several of WeChat’s most important  
20 functions involve social networking and other communications, both in China and in the  
21 United States.

22 60. The Secretary’s mischaracterization demonstrates the government’s lack of  
23 investigation and understanding of the software that it has now banned.

24 61. In a televised interview on Friday, September 18, 2020, the Secretary of  
25 Commerce stated that it “is our *fear*” that WeChat is “taking data from the American  
26 public and sending it to China.” But the Secretary provided no examples of “data” being

27  
28 <sup>26</sup> Available at: <https://video.foxbusiness.com/v/6192199311001/#sp=show-clips>

1 “sen[t] . . . to China” or how the mere transmission of “data” to China constitutes a  
 2 national security threat.”<sup>27</sup>

3 62. Also on September 18, 2020, a separate statement from an anonymous  
 4 “senior Commerce official” to a reporter for the technology publication CNET appears to  
 5 confirm that the Administration has no evidence whatsoever of private data being  
 6 harvested by WeChat in the United States. “Whether we have any evidence, domestically,  
 7 of these particular apps taking data is missing the point, according to this official, because  
 8 the Administration “know[s] what the Chinese government’s intent is here in the United  
 9 States.”<sup>28</sup>

10 63. On the same day, another anonymous government official in the Commerce  
 11 Department stated to Reuters that “The U.S. Commerce Department[‘s] . . . order . . . will  
 12 bar people in the United States from downloading Chinese-owned messaging app WeChat  
 13 and video-sharing app TikTok starting on September 20.”<sup>29</sup>

14 64. According to the official, the Commerce Department order will “deplatform”  
 15 the two apps in the United States and bar Apple Inc’s app store, Alphabet Inc’s Google  
 16 Play and others from offering the apps on any platform “that can be reached from within  
 17 the United States.”<sup>30</sup>

18 65. Journalists have likewise understood the Identification as a complete ban on  
 19 the use of WeChat. On September 18, 2020, the New York Times reported under the  
 20 headlined: “Trump Administration to Ban TikTok and WeChat From U.S. App Stores.”<sup>31</sup>  
 21

22 <sup>27</sup> Available at: <https://video.foxbusiness.com/v/6192199311001/#sp=show-clips>.

23 <sup>28</sup> September 18, 2020 CNET article titled “TickTok, WeChat downloads will be barred  
 24 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.

25 <sup>29</sup> September 18, 2020 Reuters article titled “Officials: Trump to Block US Downloads of  
 26 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.

27 <sup>30</sup> September 18, 2020 CNET article titled “TickTok, 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.

<sup>31</sup> September 18, 2020 New York Times article titled “Trump Administration to Ban

1 The Wall Street Journal reported: “U.S. Bans Chinese Apps TikTok and WeChat, Citing  
 2 Security Concerns.” CNBC reported: “Trump to block downloads of TikTok, WeChat on  
 3 Sunday,” and noted that “WeChat is considered dead in the U.S.”<sup>32</sup> And the Associated  
 4 Press reported: “US bans WeChat, TikTok from app stores, threatens shutdowns,” saying  
 5 that the move could “effectively wreck the operation of both ... services for U.S. users.”<sup>33</sup>

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

7 ~~51-66.~~ 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.

10 **1. The National Emergencies Act**

11 ~~52-67.~~ The NEA, Pub. L. No. 94-412, 90 Stat. 1255, codified at 50 U.S.C. §§ 1601-  
 12 1651, was enacted by Congress in 1976 to rein in, rather than expand, the power of the  
 13 president. The NEA was designed to “insure” that the president’s “extraordinary”  
 14 emergency powers would “be utilized only when emergencies actually exist, and then,  
 15 only under safeguards of congressional review.” S. Rep. No. 94-1168, at 2 (1976).

16 ~~53-68.~~ To this end, the NEA allows the President to utilize emergency powers  
 17 authorized by Congress in other federal statutes only when there is a national emergency  
 18 that has been declared in accordance with specific statutory requirements. 50 U.S.C.  
 19 § 1621.

20 ~~54-69.~~ Among other actions required by the NEA, the President must specify the  
 21 statutory powers he intends to invoke upon issuing a national emergency. 50 U.S.C.  
 22 § 1631. He must also publish the declaration of a national emergency in the Federal

23 \_\_\_\_\_  
 24 TikTok and WeChat From U.S. App Stores,” available at:  
<https://www.nytimes.com/2020/09/18/business/trump-tik-tok-wechat-ban.html>.

25 <sup>32</sup> September 18, 2020 CNBC article titled “Trump to block downloads of TikTok,  
 26 WeChat on Sunday,” available at: [https://www.cnbc.com/2020/09/18/trump-to-block-us-](https://www.cnbc.com/2020/09/18/trump-to-block-us-downloads-of-tiktok-wechat-on-sunday-officials-tell-reuters.html)  
[downloads-of-tiktok-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).

27 <sup>33</sup> September 18, 2020 Associated Press article titled “US Bans WeChat, TikTok From  
 28 App Stores, Threatens Shutdowns,” available at:  
[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).

1 Register and transmit it to Congress “immediately.” 50 U.S.C. § 1621(a). Every six  
2 months thereafter, for as long as the emergency remains in effect, the President must  
3 transmit to Congress “a report on the total expenditures incurred by the United States  
4 Government during such six-month period which are directly attributable to the exercise of  
5 powers and authorities conferred by such declaration.” 50 U.S.C. § 1641(c). Each House  
6 of Congress, in turn, must meet at least once every six months following the declaration  
7 “to consider a vote on a joint resolution to determine whether that emergency shall be  
8 terminated.” 50 U.S.C. § 1622(b). Any national emergency declared by the President  
9 automatically terminates after one year unless the President publishes in the Federal  
10 Register and transmits to Congress a notice that the emergency “is to continue in effect  
11 after such anniversary.” 50 U.S.C. § 1622(d).

## 12                   2.       **The International Economic Emergency Powers Act**

13           ~~55.70.~~ The IEEPA grants the President limited emergency powers when the  
14 President has declared a national emergency, pursuant to the NEA, with regard to an  
15 “unusual and extraordinary threat, which has its source in whole or in substantial part  
16 outside the United States[.]” 50 U.S.C. § 1701(a). “Any exercise” of the powers granted  
17 by the IEEPA “to deal with any new threat shall be based on a new declaration of national  
18 emergency which must be with respect to such threat.” 50 U.S.C. § 1701(b).

19           ~~56.71.~~ The IEEPA does not grant the President unlimited powers during national  
20 emergencies. Rather, the statute includes specific limits on the emergency powers it  
21 authorizes. Section 1702(b) of the IEEPA states that “[t]he authority granted to the  
22 President by [the IEEPA] does not include the authority to regulate or prohibit, directly or  
23 indirectly ... (1) any postal, telegraphic, telephonic, or other personal communication,  
24 which does not involve a transfer of anything of value; (2) donations, by persons subject to  
25 the jurisdiction of the United States, of articles, such as food, clothing, and medicine,  
26 intended to be used to relieve human suffering ...; (3) the importation from any country, or  
27 the exportation to any country, whether commercial or otherwise, regardless of format or  
28 medium of transmission, of any information or informational materials ...; [or] (4) any

1 transactions ordinarily incident to travel to or from any country[.]” 50 U.S.C.  
 2 § 1702(b)(1)-(4). The IEEPA also requires that the President “consult with Congress  
 3 before exercising any of the authorities granted by this chapter,” and that the President  
 4 “immediately transmit to Congress a report” containing certain additional information  
 5 about the President’s reasons for exercising his emergency powers under the IEEPA and  
 6 the specific actions he and his subordinates will take in exercising those powers. 50  
 7 U.S.C. § 1703(a)-(b).

8 **D.E. Immediately Preceding the Executive Order, President Trump Targeted**  
 9 **Denigrating Statements Against China And Chinese People**

10 57-72. In the months before the Executive Order was issued, President Trump made  
 11 numerous anti-Chinese statements outside the context of national security that commenta-  
 12 tors have described as inciting racial animus against persons of Chinese descent for  
 13 political gain. Many of these inflammatory statements have been made in the context of  
 14 the President blaming the coronavirus pandemic on China. Instead of using the official  
 15 public health terms for the virus, such as the “novel coronavirus” and “COVID-19,”  
 16 President Trump has repeatedly and intentionally referred to the virus causing the current  
 17 pandemic as the “China virus,” “the Wuhan virus,” “China Flu,” and “Kung-Flu.”<sup>34</sup>

18  
 19 <sup>34</sup> See, e.g., Remarks by President Trump in Press Briefing (July 23, 2020),  
 20 <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  
 21 **China virus**”); Donald J. Trump (@realDonaldTrump), TWITTER (Aug. 2, 2020),  
 22 <https://twitter.com/realDonaldTrump/status/1289887533250351110> (“**Big China Virus**  
 23 breakouts all over the World, including nations which were thought to have done a great  
 24 job. The Fake News doesn’t report this. USA will be stronger than ever before, and  
 25 soon!”); Donald J. Trump (@realDonaldTrump), TWITTER (Aug. 11, 2020),  
 26 <https://twitter.com/realDonaldTrump/status/1293163704188645385> (“More Testing, which  
 27 is a good thing (we have the most in the world), equals more Cases, which is Fake News  
 28 Gold. They use Cases to demean the incredible job being done by the great men & women  
 of the U.S. fighting the **China Plague!**”); Donald J. Trump (@realDonaldTrump),  
 TWITTER (July 26, 2020),  
<https://twitter.com/realDonaldTrump/status/1287473812733341696> (“Because of my  
 strong focus on the **China Virus**, including scheduled meetings on Vaccines, our economy  
 and much else, I won’t be able to be in New York to throw out the opening pitch for the  
 @Yankees on August 15th. We will make it later in the season!”); Donald J. Trump  
 (@realDonaldTrump), TWITTER (Mar. 18, 2020),  
<https://twitter.com/realDonaldTrump/status/1240243188708839424> (“I always treated the

1 ~~58-73.~~ 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 has defended Trump’s dangerous and incendiary language.<sup>35</sup> The Anti-  
 4 Defamation League has reported an increasing number of hate crimes, including racial  
 5 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.”<sup>36</sup> 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 descent after the success of the Japanese auto industry was blamed for major job losses in  
 12 the American Rust Belt.<sup>37</sup>

13 ~~59-74.~~ In addition to asserting that the United States’ incidence of COVID-19 is  
 14 China’s fault, the President has exploited anti-Chinese sentiment as a rallying cry for his  
 15 electoral campaign. For example, on August 11, 2020, President Trump stated that “[i]f I  
 16 don’t win the election, China will own the United States. You’re going to have to learn to  
 17

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18 **Chinese Virus** very seriously, and have done a very good job from the beginning,  
 19 including my very early decision to close the “borders” from China - against the wishes of  
 20 almost all. Many lives were saved. The Fake News new narrative is disgraceful & false!”);  
 21 Li Zhou, *Trump’s Racist References to the Coronavirus Are His Latest Effort to Stoke*  
 22 *Xenophobia*, VOX (June 23, 2020), [https://www.vox.com/2020/6/23/21300332/trump-](https://www.vox.com/2020/6/23/21300332/trump-coronavirus-racism-asian-americans)  
 23 [coronavirus-racism-asian-americans](https://www.vox.com/2020/6/23/21300332/trump-coronavirus-racism-asian-americans); Colby Itkowitz, *Trump Again Uses Racially*  
 24 *Insensitive Term to Describe Coronavirus*, WASH. POST (Jun. 23, 2020),  
 25 [https://www.washingtonpost.com/politics/trump-again-uses-kung-flu-to-describe-](https://www.washingtonpost.com/politics/trump-again-uses-kung-flu-to-describe-coronavirus/2020/06/23/0ab5a8d8-b5a9-11ea-aca5-ebb63d27e1ff_story.html)  
 26 [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).

23 <sup>35</sup> Andrew Restuccia, *White House Defends Trump Comments on ‘Kung Flu,’ Coronavirus*  
 24 *Testing*, WALL ST. J. (Jun. 22, 2020), [https://www.wsj.com/articles/white-house-defends-](https://www.wsj.com/articles/white-house-defends-trump-comments-on-kung-flu-coronavirus-testing-11592867688)  
 25 [trump-comments-on-kung-flu-coronavirus-testing-11592867688](https://www.wsj.com/articles/white-house-defends-trump-comments-on-kung-flu-coronavirus-testing-11592867688).

25 <sup>36</sup> *Reports of Anti-Asian Assaults, Harassment and Hate Crimes Rise as Coronavirus*  
 26 *Spreads*, ADL BLOG (Jun. 18, 2020), [https://www.adl.org/blog/reports-of-anti-asian-](https://www.adl.org/blog/reports-of-anti-asian-assaults-harassment-and-hate-crimes-rise-as-coronavirus-spreads)  
 27 [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).

27 <sup>37</sup> Ali Rogin & Amna Nawaz, *‘We Have Been Through this Before.’ Why Anti-Asian Hate*  
 28 *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-](https://www.pbs.org/newshour/nation/we-have-been-through-this-before-why-anti-asian-hate-crimes-are-rising-amid-coronavirus)  
[hate-crimes-are-rising-amid-coronavirus](https://www.pbs.org/newshour/nation/we-have-been-through-this-before-why-anti-asian-hate-crimes-are-rising-amid-coronavirus).

1 speak Chinese.”<sup>38</sup> President Trump has on numerous occasions mocked the accent of  
 2 Chinese and Asian-Americans, including those of prominent Asian leaders.<sup>39</sup>

3 **THE EXECUTIVE ORDER CAUSED MASS CONFUSION AND HAS ALREADY**  
 4 **HARMED PLAINTIFFS**

5 ~~60.75.~~ American law firms have been unable to advise their clients as to the scope  
 6 of “transactions” that are banned under Executive Order 13943. Multiple prominent law  
 7 firms in the United States have effectively conceded that they cannot provide guidance  
 8 about the meaning of the Order, and have speculated that all uses of WeChat could be  
 9 prohibited. One law firm recently informed its clients that the “extraordinary breadth and  
 10 ambiguity” of the Executive Order has “left US companies and many others looking to the  
 11 Trump Administration for additional clarity[.]”<sup>40</sup> Another firm speculated that WeChat  
 12 “could be pulled out of the app stores and off of American phones .... Companies could  
 13 be banned from interacting with the extensive interactive payment network used by  
 14 WeChat.”<sup>41</sup>

15 ~~61.76.~~ Each plaintiff learned of the Executive Order at or near the time it was issued  
 16 and has suffered harm as a result of the Executive Order’s sweeping prohibition on “any  
 17

18 <sup>38</sup> Kevin Liptak, *Trump Says Americans Will Have to Learn Chinese if Biden Wins, but*  
 19 *Offers Little Condemnation of Beijing*, CNN (Aug. 11, 2020),  
<https://www.cnn.com/2020/08/11/politics/trump-china-biden-learn-chinese/index.html>

20 <sup>39</sup> See, e.g., Laura Ma, *‘We want deal!’: Trump fakes Asian accent to mock Chinese and*  
 21 *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-](https://www.scmp.com/news/world/article/1852785/we-want-deal-trump-fakes-asian-accent-mock-chinese-japanese-businessmen)  
 22 [accent-mock-chinese-japanese-businessmen](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*  
 23 *cracks jokes about Equinox scandal, kamikaze pilots at Hamptons fundraiser*, N.Y. POST  
 (Aug. 9, 2019), [https://nypost.com/2019/08/09/trump-cracks-jokes-about-rent-control-](https://nypost.com/2019/08/09/trump-cracks-jokes-about-rent-control-kamikaze-pilots-at-hamptons-fundraiser/)  
[kamikaze-pilots-at-hamptons-fundraiser/](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”).

24 <sup>40</sup> Ambassador Charlene Barshefsky, David S. Cohen, Ronald I. Meltzer, David M.  
 25 Horn & Semira Nikou, *New Executive Orders Target Chinese Apps*, WILMER HALE,  
 (Aug. 10, 2020), [https://www.wilmerhale.com/en/insights/client-alerts/20200810-new-](https://www.wilmerhale.com/en/insights/client-alerts/20200810-new-executive-orders-target-chinese-apps)  
[executive-orders-target-chinese-apps](https://www.wilmerhale.com/en/insights/client-alerts/20200810-new-executive-orders-target-chinese-apps).

26 <sup>41</sup> David A. Kaufman, John Sandweg, David K. Cheng & Rachel S. Winkler,  
 27 *Administration’s Attempt to Delete TikTok and WeChat: Latest Trade Tiff or New Battle*,  
 NIXON PEABODY (Aug. 7, 2020),  
 28 [https://www.nixonpeabody.com/en/ideas/articles/2020/08/07/administrations-attempt-to-](https://www.nixonpeabody.com/en/ideas/articles/2020/08/07/administrations-attempt-to-delete-tiktok-and-wechat)  
[delete-tiktok-and-wechat](https://www.nixonpeabody.com/en/ideas/articles/2020/08/07/administrations-attempt-to-delete-tiktok-and-wechat).

1 transaction that is related to WeChat by any person, or with respect to any property.” 85  
2 FR 48641, at § 1(a). Plaintiff Duan, for example, experiences fear and worry on a daily  
3 basis that Chihuo, Inc.—the business she founded and for which she continues to serve as  
4 CEO—will not survive if it cannot provide services to customers through WeChat.  
5 Plaintiff Peng fears that the non-profit organization she founded will not be able to  
6 continue providing services to Chinese speakers in the United States, and that she  
7 personally will be unable to maintain her social ties and communicate with other members  
8 of the Chinese community in the United States. Plaintiff Zhang worries that she will be  
9 unable to maintain social ties and communicate with other Chinese-speaking people—both  
10 in the United States and in China. She believes that the charity she founded—Hita  
11 Education Foundation—could not have been founded without WeChat and may not be able  
12 to survive without being able to connect with Chinese-speaking people through the app.  
13 Each individual plaintiff fears losing connection with close friends and family members.

14 ~~62-77.~~ All plaintiffs, moreover, have already been forced by the Executive Order to  
15 expend time and resources preserving their contacts and memories on WeChat and/or  
16 searching—without success—for an alternative platform that could sustain their  
17 businesses, charities, and/or social and family ties. Plaintiff Peng has received inquiries  
18 from Chinese families through MHACC, her mental health WeChat group, about where to  
19 go if WeChat is banned, but has been unable find a comparable substitute to replace  
20 WeChat. Plaintiff Chihuo has spent money attempting to redirect its business activities  
21 that currently depend on WeChat by establishing alternative social media channels on  
22 YouTube, Instagram and Facebook. These efforts to find a substitute for WeChat have not  
23 been and are unlikely to be successful. This is because alternative apps often do not offer a  
24 Chinese user interface. More importantly, alternative apps also do not provide access to  
25 WeChat’s vast network of Chinese-speaking users. Without mincing words, WeChat’s  
26 enormous network effect is *irreplaceable*, and any other platform would not provide the  
27 community that WeChat does.

28

**FIRST CLAIM FOR RELIEF**

**(First Amendment Freedom of Speech)**

1  
2  
3 ~~63.78.~~ Plaintiffs reallege and hereby incorporate by reference the allegations  
4 contained in the preceding paragraphs of this Complaint.

5 ~~64.79.~~ The First Amendment guarantees freedoms concerning religion, expression,  
6 the press, assembly, and petitioning the government. Plaintiffs’ use of WeChat are  
7 exercises of all these freedoms.

8 ~~65.80.~~ WeChat is a mobile application that is broadly used by members of the  
9 Chinese diaspora throughout the world, serving as a virtual public square where people  
10 within the Chinese and Chinese-speaking communities can connect based on shared  
11 interests. Plaintiffs and other WeChat users use the app to express themselves and  
12 communicate by text, voice, and video messaging; attend religious services and cultural  
13 events; organize political groups and causes; read and share information in the media,  
14 among other protected First Amendment activities. These actions can reasonably be  
15 understood to be included as “any transaction that is related to WeChat by any person, or  
16 with respect to any property,” as provided in the Executive Order.

17 ~~66.81.~~ Banning the use of WeChat in the United States has the effect of foreclosing  
18 all meaningful access to social media for users, such as Plaintiffs, who wish to  
19 communicate and interact with members of the Chinese and Chinese-speaking  
20 communities.

21 ~~67.82.~~ The Executive Order discriminates against the ideas and viewpoints of  
22 WeChat users. Under the Executive Order, only content on WeChat is prohibited; the  
23 content on other comparable mobile applications is not regulated or prohibited, despite  
24 also capturing personal and proprietary information from its users. Therefore, the  
25 Executive Order targets speech by WeChat users, the majority of whom are members of  
26 the Chinese and Chinese-speaking communities, and intends to silence viewpoints within  
27 these communities.

28 ~~68.83.~~ The Executive Order is overly expansive and does not justify the supposed

1 risks that are presented by permitting WeChat to operate in the United States. There are  
2 less restrictive ways to regulate the collection of personal and proprietary information on  
3 the WeChat app and address potential national security concerns. Defendants cannot  
4 proffer a justifiable reason for discriminating against the content of WeChat users, who  
5 express viewpoints within the Chinese and Chinese-speaking communities.

6 ~~69~~.~~84~~. The Executive Order is substantially overbroad in that it renders people who  
7 conduct “any transaction that is related to WeChat” subject to incarceration and monetary  
8 penalties, even though “any transaction” includes a wide range of protected expressive and  
9 associative rights under the First Amendment.

10 ~~70~~.~~85~~. Plaintiff and others similarly situated have been and will continue to be  
11 chilled and burdened in the exercise of their First Amendment rights because of the threat  
12 of penalties, including incarceration and other treatment, under the Executive Order that  
13 arises in connection with “any transaction that is related to WeChat.”

14 ~~71~~.~~86~~. Accordingly, the Executive Order violates Plaintiffs’ rights as guaranteed by  
15 the First Amendment. Defendants’ violations inflict ongoing harm upon Plaintiffs.

## 16 **SECOND CLAIM FOR RELIEF**

### 17 **(Fifth Amendment – Equal Protection)**

18 ~~72~~.~~87~~. Plaintiffs reallege and hereby incorporate by reference the allegations  
19 contained in the preceding paragraphs of this Complaint.

20 ~~73~~.~~88~~. The Due Process Clause of the Fifth Amendment prohibits the Federal  
21 Government from denying equal protection of the laws, including on the basis of race,  
22 ethnicity, nationality, national origin, and alienage.

23 ~~74~~.~~89~~. WeChat is widely used and depended on by the Chinese community in the  
24 United States to communicate with friends, family, customers, and other persons of  
25 Chinese or Chinese American ancestry, including Chinese-language speakers.

26 ~~75~~.~~90~~. Plaintiffs Peng, Duan, Zhang, and Bao are members of the Chinese  
27 community in the United States. Plaintiff Brent Coulter uses WeChat to communicate  
28 with people of Chinese and/or Chinese-American ancestry in the United States and abroad.

1 Plaintiffs USWUA and Chihuo are organizations or businesses whose members or  
2 customers primarily consist of people of Chinese and/or Chinese American ancestry in the  
3 United States, who use WeChat to communicate with others similar to them both in the  
4 United States and abroad.

5 ~~76.91.~~ By prohibiting the use of WeChat but not other apps that are used primarily  
6 by people who are not of Chinese or Chinese-American ancestry, Executive Order 13943  
7 singles out people of Chinese and Chinese-American ancestry and subjects them and  
8 people who communicate with them to disparate treatment on the basis of race, ethnicity,  
9 nationality, national origin, and alienage.

10 ~~77.92.~~ This disparate treatment is motivated by Defendants' animus towards people  
11 of Chinese and/or Chinese American ancestry, and has the purpose of discriminating  
12 against people of Chinese and/or Chinese-American ancestry.

13 ~~78.93.~~ Defendants' issuance of Executive Order 13943 therefore violates Plaintiffs'  
14 rights to equal protection guaranteed by the Fifth Amendment to the United States  
15 Constitution. Defendants' violations inflict ongoing harm upon Plaintiffs.

### 16 **THIRD CLAIM FOR RELIEF**

#### 17 **(Fifth Amendments – Due Process)**

18 ~~79.94.~~ Plaintiffs reallege and hereby incorporate by reference the allegations  
19 contained in the preceding paragraphs of this Complaint.

20 ~~80.95.~~ Sections 1(a) and 2 of Executive Order 13943 alter the legal rights and  
21 obligations of private parties, including Plaintiffs, independent of any action by the  
22 Secretary of Commerce.

23 ~~81.96.~~ These sections include only a conclusory description of prohibited  
24 “transactions related to WeChat,” which provides no notice to WeChat users or anyone  
25 else of the specific conduct that is prohibited.

26 ~~82.97.~~ In spite of the Executive Order's vagueness, violations of Sections 1(a) and 2  
27 are punishable by incarceration and monetary penalties. 50 U.S.C. § 1705(b)-(c).

28 ~~83.98.~~ Plaintiffs, who use WeChat to communicate and share information with

1 friends, family, customers, and other persons both in the United States and abroad, do not  
 2 know which of their activities that involve WeChat are prohibited by the Executive Order.  
 3 Because of this uncertainty, they are justifiably fearful of using WeChat in any way and for  
 4 any purpose.

5 ~~84.99.~~ Sections 1(a) and 2 of Executive Order 13943 provide inadequate notice of  
 6 the conduct they purport to penalize and are void for vagueness under the Fifth  
 7 Amendment to the U.S. Constitution.

#### 8 **FOURTH CLAIM FOR RELIEF**

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

10 ~~85.100.~~ Plaintiffs reallege and hereby incorporate by reference the allegations  
 11 contained in the preceding paragraphs of this Complaint.

12 ~~86.101.~~ The IEEPA includes specific limits on Defendants’ authority to  
 13 prohibit transactions related to WeChat. Section 1702(b) of the IEEPA states in relevant  
 14 part that “[t]he authority granted to the President by [the IEEPA] does not include the  
 15 authority to regulate or prohibit, directly or indirectly ... (1) any postal, telegraphic,  
 16 telephonic, or other personal communication, which does not involve a transfer of anything  
 17 of value; (2) donations, by persons subject to the jurisdiction of the United States, of  
 18 articles, such as food, clothing, and medicine, intended to be used to relieve human  
 19 suffering...[or] (3) the importation from any country, or the exportation to any country,  
 20 whether commercial or otherwise, regardless of format or medium of transmission, of any  
 21 information or informational materials[.]” 50 U.S.C. § 1702(b)(1)-(3).

22 ~~87.102.~~ Neither the President nor any other federal official can take an action  
 23 that exceeds the scope of their constitutional and/or statutory authority. In Executive  
 24 Order 13943, however, the President has nonetheless “prohibited” Plaintiffs from using  
 25 WeChat in any manner, in direct contravention of the specific limits on Presidential  
 26 authority contained in 50 U.S.C. § 1702(b).

27 103. The Secretary’s Identification likewise seeks to effectuate an outright ban of  
 28 the WeChat platform—directly curtailing “communications” in the manner explicitly

1 prohibited by the IEEPA.

2 88-104. Plaintiffs use WeChat for “personal communication[s]” that “do[] not  
3 involve a transfer of anything of value,” within the meaning of 50 U.S.C. § 1702(b)(1).

4 89-105. Plaintiffs use WeChat to coordinate and arrange for donations of  
5 “articles ... intended to be used to relieve human suffering,” within the meaning of 50  
6 U.S.C. § 1702(b)(2).

7 90-106. Plaintiffs use WeChat to import and/or export “information or  
8 information materials,” within the meaning of 50 U.S.C. § 1702(b)(3).

9 91-107. Defendants are acting *ultra vires* in prohibiting “personal  
10 communication[s],” that “do[] not involve a transfer of anything of value,” as well as the  
11 coordination of donations of “articles ... intended to be used to relieve human suffering”  
12 and the importation and/or exportation of “information or information materials.”

13 **FIFTH CLAIM FOR RELIEF**

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

15 92-108. Plaintiffs reallege and hereby incorporate by reference the allegations  
16 contained in the preceding paragraphs of this Complaint.

17 93-109. On information and belief, Defendants did not immediately transmit  
18 to Congress the President’s declaration of a national emergency contained in Executive  
19 Order 13873, as required by 50 U.S.C. § 1621(a).

20 94-110. On information and belief, neither house of Congress has met, at the  
21 required six month intervals or otherwise, to consider a vote on a joint resolution to  
22 determine whether that emergency shall be terminated, as required by 50 U.S.C. § 1622(b).

23 95-111. On information and belief, the President has not transmitted to  
24 Congress any report on the total expenditures incurred by the United States government  
25 which are directly attributable to the exercise of powers and authorities conferred by the  
26 declaration of a national emergency in Executive Order 13873, as required by 50 U.S.C.  
27 § 1641(c).

28 96-112. On information and belief, the President did not consult with

1 Congress, on the threat posed by WeChat or otherwise, before issuing Executive Order  
2 13943, as required by 50 U.S.C. § 1703(a).

3 ~~97-113.~~ On information and belief, the President did not immediately transmit  
4 to the Congress a report specifying, among other information required in 50 U.S.C.  
5 § 1703(b), “the circumstances which necessitate such exercise of authority” and “the  
6 actions to be taken in the exercise of those authorities[.]” Although the President did  
7 transmit a letter to the Speaker of the House of Representatives and the President of the  
8 Senate on the same day he issued Executive Order 13943, this letter merely repeats—often  
9 verbatim—the vague and conclusory language contained in the Executive Order. This  
10 limited information does not provide the Congress with sufficient information to exercise  
11 the kind of ongoing oversight of the President required by both the IEEPA and the NEA.

12 ~~98-114.~~ The President has acted *ultra vires* by exercising emergency powers  
13 purportedly authorized by the IEEPA without consulting with and reporting to Congress in  
14 the manner prescribed by 50 U.S.C. §§ 1621-22, 1641(c), and 1703.

### 15 **SIXTH CLAIM FOR RELIEF**

#### 16 ***(Ultra Vires (50 U.S.C. § 1701))***

17 ~~99-115.~~ Plaintiffs reallege and hereby incorporate by reference the allegations  
18 contained in the preceding paragraphs of this Complaint.

19 ~~100-116.~~ 50 U.S.C. § 1701 conditions the President’s exercise of the emergency  
20 powers listed in Section 1702(a) on the President’s declaration of a national emergency  
21 with respect to an “unusual and extraordinary threat, which has its source in whole or  
22 substantial part outside the United States[.]” Section 1701 further requires that “[a]ny  
23 exercise” of the powers granted in Section 1702(a) “to deal with any new threat shall be  
24 based on a new declaration of national emergency which must be with respect to such  
25 threat.”

26 ~~101-117.~~ Executive Order 13943 cites the President’s declaration of a national  
27 emergency in Executive Order 13873 as the basis for his exercise of emergency powers  
28 purportedly granted by the IEEPA. Executive Order 13873, which was issued more than

1 14 months before Executive Order 13943, does not mention WeChat and does not identify  
2 the app as a potential threat to the national security of the United States.

3 ~~102.118.~~ The threat purportedly posed by WeChat constitutes a “new threat”  
4 within the meaning of 50 U.S.C. § 1701(b), and thus requires a new declaration of national  
5 emergency before the President exercises any presidential powers authorized by the  
6 IEEPA. The President has not issued such a new declaration of a national emergency with  
7 respect to the threat posed by WeChat.

8 ~~103.119.~~ The President has acted *ultra vires* by exercising emergency powers  
9 purportedly authorized by IEEPA that depend on the President having declared a national  
10 emergency with respect to the threat posed by WeChat, in direct contravention of 50  
11 U.S.C. § 1701(b).

## SEVENTH CLAIM FOR RELIEF

### (Religious Freedom Restoration Act – 42 USC § 2000bb(1)(a))

14 ~~104.120.~~ Plaintiffs reallege and hereby incorporate by reference the allegations  
15 contained in the preceding paragraphs of this Complaint.

16 ~~105.121.~~ In 1993, Congress enacted the Religious Freedom Restoration Act  
17 (“RFRA), Pub. L. No. 103-31 (1993) (codified at 42 U.S.C. §§ 2000bb–2000bb-4).

18 ~~106.122.~~ RFRA prohibits the government from “substantially burden[ing] a  
19 person’s exercise of religion even if the burden results from a rule of general applicability”  
20 unless the government can demonstrate that the application of the burden to the person is:  
21 (1) in furtherance of a compelling governmental interest; and (2) the least restrictive means  
22 of furthering that compelling governmental interest. 42 U.S.C. § 2000bb-1.

23 ~~107.123.~~ WeChat users in the United States use WeChat to participate in the  
24 conduct of religious worship and other practices in accordance with the tenets and  
25 practices of various religions. WeChat users in the United States use WeChat to organize  
26 and participate in religious activities with other members who similarly use WeChat  
27 regularly in order to worship and/or practice their religion.

28 ~~108.124.~~ The Executive Order will result in substantial burdens upon the

1 practice of religion of WeChat users in the United States by forcing them to abstain from  
2 participating in their practice of religion with other WeChat users or risk the threat of civil  
3 or criminal sanctions and violates RFRA.

4 **EIGHTH CLAIM FOR RELIEF**

5 **(Violation of the Administrative Procedure Act)**

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

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

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

19 128. 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.

22 129. The Secretary’s definitions of the transactions prohibited by EO 13943  
23 directly contravene Section 1702(b) by directly or indirectly regulating or prohibiting  
24 “personal communication[s],” that “do[] not involve a transfer of anything of value,” as  
25 well as the coordination of donations of “articles . . . intended to be used to relieve human  
26 suffering” and the importation and/or exportation of “information or information  
27 materials.”

28 130. The definitions are therefore arbitrary, capricious, an abuse of discretion, or

1 otherwise not in accordance with law, and in excess of statutory jurisdiction, authority, or  
2 limitations, or short of statutory right, within the meaning of 5 U.S.C. § 706(2).

3 131. Furthermore, the Identification was promulgated without notice and  
4 comment rulemaking as required by the APA. 5 U.S.C. § 553(b), (c).

5 132. The Identification is therefore in direct contravention of the APA and must  
6 be vacated.

7 **PRAYER FOR RELIEF**

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

9 1. Declaring that Executive Order 13943 is unconstitutional under the First  
10 Amendment;

11 2. Declaring that Executive Order 13943 is unconstitutional under the Fifth  
12 Amendment;

13 3. Declaring that Executive Order 13943 ~~does~~ and the Identification do not  
14 comply with the limitations on presidential power in the National Emergency Act and the  
15 International Economic Emergency Powers Act, and is thus *ultra vires*;

16 4. Declaring that Executive Order 13943 violates the Religious Freedom  
17 Restoration Act;

18 5. Declaring that the Secretary's September 18, 2020 Identification of  
19 Prohibited Transactions violated the APA;

20 5-6. Preliminarily and permanently enjoining Defendants from enforcing the  
21 Executive Order and the Identification to prohibit the use of WeChat in the United States  
22 by individual users, businesses and groups;

23 6-7. Preliminarily and permanently staying the implementation date of any of the  
24 penalty provisions of Executive Order ~~until a reasonable time after the Secretary of~~  
25 ~~Commerce promulgates definitions of "transactions" under the Executive Order~~ and the  
26 Identification; and

27 7-8. Granting such other and further relief as this Court may deem just and  
28 proper, including an award to Plaintiffs of the costs of this suit and reasonable attorneys'

1 fees and litigation expenses under the Equal Access to Justice Act, 28 U.S.C. § 2412(d).

2 DATED: ~~September 18, August 21,~~ Respectfully submitted,  
3 2020

ROSEN BIEN GALVAN & GRUNFELD LLP

4 By: /s/ Michael W. Bien

5 Michael W. Bien

6 Attorneys for Plaintiffs U.S. WECHAT USERS  
7 ALLIANCE, CHIHUO INC., BRENT COULTER,  
8 FANGYI DUAN, JINNENG BAO, ELAINE  
9 PENG, and XIAO ZHANG  
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